

THE CORRECTIONAL AGENCIES OF TASMANIA

by

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I HEREBY CERTIFY that this thesis is entirely my own work and that no material contained in it has been accepted for the award of any other degree or diploma in any University and that to the best of my knowledge and belief the thesis contains no copy or paraphrase of material previously published or written by another person except where due reference is made in the text.

Mary Dainton-Jean.

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## P R E F A C E

Criminological Research is new to Tasmania and for that reason, the purpose of this thesis is to give a broad view of the correctional processes rather than a detailed examination of one particular aspect. If the present work performs no other function, it is hoped sincerely that it will stimulate sufficient interest to promote further investigations into a field where public money is spent without any real knowledge of what is achieved.

In this thesis, the correctional processes have been viewed from three main standpoints: the legislative powers of the Courts in imposing sentences have been examined, the Correctional Agencies have been inspected, and interviews conducted with those in charge of each, and finally, records concerning a sample of offenders have been investigated, with a view to ascertaining how the sentencing powers are used in practice and upon whom.

Tasmania constitutes an ideal field for research of this nature: it is self-governing and compact; the records of the various Departments are kept within a small radius; the Institutions are all accessible to Hobart. Being an island State, there is relatively little inter-state movement of offenders compared with the rest of Australia.

Without the co-operation of those in charge of the different Agencies,



the whole project would have been futile. I wish to express my sincere thanks to the Attorney-General, the Controller of Prisons, the Commissioner of Police, the Solicitor-General and all those in each of the respective Departments and the Superintendents of all the Institutions I visited, who have so patiently borne with me during the course of the research.

I have been extremely fortunate in the help which has been afforded me by Professor Norval Morris, of the University of Chicago, and Mr. Justice Crisp, Justice of the Supreme Court of Tasmania, who have both made various suggestions as to the general scheme of the project, which I have accepted with gratitude.

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M. D-F.

## P A R T   I

### LEGISLATIVE POWERS OF SENTENCING

#### 1. INTRODUCTION:

"There is a feeling that the traditional methods (of sentencing) are inadequate and that not enough has evolved in constructing alternatives..... Judges like Surgeons in an emergency must use the instruments to hand."<sup>(1)</sup> This statement made by Professor Radzinowicz expresses a realisation of inadequacy which is becoming worldwide. With the growth of psychology, psychiatry, criminology and the neighbouring sciences, current research has demonstrated only too clearly the "hit or miss" character of sentencing policies hitherto adopted by the Courts. It is now recognised that whereas a particular measure, such as probation, may completely reform one offender, another guilty of a similar offence and with similar antecedents, may abuse the trust placed in him by the Courts and pursue a life of crime with added confidence.

It is of vital importance that there should be a close degree of co-operation between those involved in the enforcement and the administration of the law and that sentences should have the opportunity

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<sup>(1)</sup> The London Times, 30th May 1964 "Sentencing Policy in Criminal Cases."

of reaping the benefit of modern research. To a certain extent, every community is individual in that there are very real variations in the law, not only between different countries but between the different States in Australia. Further, the political, social and economic pressures bearing upon the man in the street may vary not only in place, but also in time. Bearing these reservations in mind, great advantage is to be gained from examining the developments in criminology and penology in other countries. Scientific progress has directed our attention away from the notion of the crime and towards the notion of the criminal. In most instances, primary emphasis is now laid upon measures which will reform the criminal and thus deter him from committing further offences. However, a vital consideration in selecting sentences is the aspect of deterring others from committing similar offences, for only in so doing can public interests be safeguarded.

Thus the dilemma which now faces the Courts is how can we reconcile taking steps which will reform the criminal while deterring others from committing the same crime? Is it not true that these two considerations may be contradictory of one another?

Quite clearly, statutes which prescribe fixed sentences for particular offences leave no room whatever for the consideration of the circumstances surrounding the offender. On the other hand, it may be argued that the public is effectively deterred from committing offences where the penalty is already determined.

The only solution to this perplexing problem seems to be that there should be definite criteria to assist the Courts in selecting sentences and that there should be some education of the public to enable understanding of the considerations which are taken into account. An attempt to provide such criteria has been made by the American Law Institute in its Model Penal Code. These criteria cover the whole ambit of the Courts powers including the imposition of fines, the use of the Probation Service and sentencing offenders to prison. A similar effort to provide criteria for the use of judges and magistrates has been made in England by the publication of a "Sentencing Handbook". This booklet was the fruit of much concern<sup>(1)</sup> and agitation which came to a head after the Streatfield Committee made its report on the Business of the Criminal Courts.<sup>(2)</sup>

It should be emphasised that the ideal is not uniformity in sentencing, for as every human being is subject to peculiar hereditary traits and environmental stresses, no two cases coming before the Courts are identical. Rather the ideal is that the same criteria should be applied before sentence is passed. In this way and in so far as it is possible to do so, each case will receive an equality of consideration.

In the words of the Streatfield Committee, "Sentencing is a growing subject and there is much more to be learned and applied than

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(1) See "Sentencing in Magistrates Courts" Roger Hoad, 1962. Stevens & Sons.

(2) Cmnd 1289 Para. 299.

there used to be and special arrangements are necessary to ensure that sentencers are kept abreast of these developments."<sup>(1)</sup> Further, the Committee pointed out "Our detailed recommendations should be read and implemented in the light of the way in which the subject is developing, the cardinal principle is that every sentence should be based on reliable information which is relevant to the objectives the Court has in view."<sup>(2)</sup>

In Australia, the science of criminology is yet in its infancy but there is growing concern that research should be carried out to investigate the effects of the various penal measures used by the Courts. While research conducted overseas is relevant, the fruits of it cannot be applied blindly. It is essential that Australian crime should be observed objectively in the light of Australian criminal law and against the Australian setting. This must be further qualified in view of the different systems adopted by each State though of course they all have a certain amount in common. Tasmania, Queensland and Western Australia all have Criminal Codes which have certain marked resemblances, but nevertheless are not identical. Great advantage would be derived if the problem of crime could be tackled on a Commonwealth rather than a State basis.

A Select Committee of the Tasmanian House of Assembly recommended

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(1) Summary Para. 9 (d)

(2) Summary Para. 9 (e)

in 1962 "That conferences be held at regular intervals between the States and the Commonwealth with a view to achieving uniformity in criminal law in Australia."<sup>(1)</sup> Uniformity could only be achieved by sweeping penal reform but unless and until this is possible, every State should press forward in investigating the strengths and weaknesses of its own particular system.

A complete analysis of all the occasions upon which the Courts can exercise each sentencing power is beyond the scope of this thesis; rather it is intended to consider the full range of powers at the Courts' disposal.

Reference will be made to certain Acts under which the Courts most frequently sentence offenders but it must be stressed that there are numerous other legislative provisions which are not considered here but which enable the Courts to exercise similar powers.

Some comparisons are made with powers which are exercised in other jurisdictions, and there is reference, where relevant, to research conducted and conclusions reached with regard to the effects of various forms of punitive and other treatment.

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(1) Para. 156.

The Jurisdiction of the Courts.

Before considering the sentencing powers which may be exercised by the various Courts, it is relevant to discuss the question of jurisdiction. Generally, adults charged with indictable offences are prosecuted before the Supreme Court, though there are various exceptions to this rule.

These exceptions have been considerably extended by the Justices Act 1963 which amended the Justices Act 1959.<sup>(1)</sup> It is now provided that where a person is brought before justices on a complaint for stealing and certain related offences, the value of the property involved does not exceed £10, the section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with by the justices. The offences which are referred to are stealing, killing an animal with intent to steal, unlawfully branding an animal, obtaining goods by false pretence, cheating, fraud in respect of payment for work, and fraudulently concealing a mining discovery.

In certain other cases, the justices may ask the defendant whether he is willing to be tried by the justices instead of by a jury and if the defendant, or if he is under 16, his parents, do not object, the

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<sup>(1)</sup> Justices Act 1959 S. 71 as amended.



section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly. The offences referred to fall into four categories:-

- (1) Escape, rescue, facilitating the escape of a prisoner, harbouring an offender, assisting the escape of a criminal lunatic, rescuing goods legally seized and making a false declaration or statement.
- (2) Stealing, killing an animal with intent to steal, unlawfully branding an animal, obtaining goods by false pretences, cheating, fraud in respect of payment for work and fraudulently concealing a mining discovery if the value of the goods involved exceeds £10 but does not exceed £200.
- (3) Breaking and entering a building other than a dwellinghouse except where it is alleged
  - (i) property to the value of more than £200 has been stolen;
  - (ii) violence has been used or offered to any person in or about the building;
  - (iii) the defendant had in his possession a gun, pistol, dagger, cosh or other offensive weapon;
  - (iv) explosives were used, or
  - (v) the defendant intended to commit a crime other than stealing.
- (4) Forgery and uttering where the value of the cheque is not more than £200.

However, in all cases falling within S.71 of the Justices Act, the

justices may cease hearing a complaint if they consider that the charge is fit for prosecution on indictment.<sup>(1)</sup>

There is a complementary provision under the Criminal Code<sup>(2)</sup> which enables a judge of the Supreme Court to order that an accused person shall be tried summarily before a police magistrate where it appears that the punishment provided in the section shall be adequate for the circumstances of the particular case. The provision only applies, however in cases where the accused person himself seeks an order under the section. In practice, the section has not been invoked at all in recent years.

Generally, Children's Courts have jurisdiction in respect of all offences committed by children under the age of 17 years. However there are several qualifications to this general rule.

Section 14 of the Child Welfare Act 1960 provides as follows:-

"14. (1) Subject to this Act, a children's Court and the magistrate or justices constituting such a Court, in addition to any other jurisdiction, powers, and authorities conferred upon them by this Act have, in respect of offences committed or alleged to have been committed by children, all jurisdiction, powers and authorities possessed by police magistrates, courts of petty sessions or justices.

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(1) Justices Act 1959 S.71 (3) (b)

(2) Criminal Code 1924 S.308.

(2) Subject to subsection (3) and subsection (4) of this section, no charge against a child shall be heard by a Court of summary jurisdiction that is not a children's Court.

(3) A charge that is made jointly against a child who has attained the age of 15 years and a person who has attained the age of 17 years shall be heard by a Court of summary jurisdiction other than a children's Court.

(4) Where a child who has attained the age of 15 years is charged with an offence, the charge may be heard otherwise than in a children's Court if a person who has attained the age of 17 years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence.

(5) Nothing in any enactment that requires the proceedings in respect of any offence committed or alleged to have been committed by any person to be heard and determined by a police magistrate sitting alone prevents those proceedings in respect of such an offence committed or alleged to have been committed by a child from being heard in a children's Court, but if they are so heard, they shall not be heard otherwise than by a police magistrate or a special magistrate sitting alone.

(6) Nothing in this section affects the powers of any justice to receive a complaint or issue any summons or to grant issue or endorse any warrant or to admit to bail or the jurisdiction of a court of summary jurisdiction under 8.6 of the Probation of Offenders Act 1934."

If a child under the age of 14 has been charged with an indictable offence other than murder, attempt to murder, manslaughter or wounding with intent to do grievous bodily harm, the children's Court shall hear and determine the charge as if it were an offence punishable on summary conviction before justices<sup>(1)</sup> If a child over the age of 14 is charged with any of the above mentioned indictable offences, or rape or robbery with violence, the children's Court can give him the option of being tried by it instead of by a jury and provided neither the child nor his parent or guardian objects, the court shall hear and determine the charge as if it were a charge for an offence punishable on summary conviction before justices.

The minimum age for criminal responsibility in Tasmania is 7<sup>(2)</sup> and there is a rebuttable presumption that children between the ages of 7 and 14 have not sufficient capacity to know an act or omission is one which they ought not to do or make<sup>(3)</sup> save in the case of a charge of carnal knowledge when it is conclusively presumed that a male child under the age of 14 years is incapable of committing such an offence<sup>(4)</sup>

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(1) Child Welfare Act 1960 S.27 (1)

(2) Criminal Code 1924 S.18 (1)

(3) Criminal Code 1924 S.18 (2)

(4) Criminal Code 1924 S.18 (3), and see recommendations of the Ingelby Committee (Cmnd 1191 para.93 Oct.1961) and the English Children and Young Persons Act 1963 whereby the age of criminal responsibility has been raised from 8 to 10.

Charges of murder, attempt to murder, manslaughter or wounding with intent to do grievous bodily harm made against children under the age of 14 years and charges in respect of those offences or rape or robbery with violence against children between the age of 14 years and 17 years must be dealt with by the Supreme Court. Where a child between the age of 14 years and 17 years has been charged with any other indictable offence, unless he has opted to be tried by the justices and his parent or guardian has not objected, the charge is also dealt with by the Supreme Court.

The usual procedure in respect of indictable offences which are triable summarily is by way of committal proceedings. The defendant is normally brought before a police magistrate or one or more justices and the charge is explained to him. If he does not require an adjournment, the charge is then read to him and he is asked to plead to the charge. If he stands mute or does not answer directly, he shall be deemed to plead not guilty.<sup>(1)</sup>

Where the defendant has elected that depositions of witnesses shall not be taken before the justices or has pleaded not guilty or that he has cause to show why he should not be convicted of the charge, or the charge is in respect of an offence punishable by death, the Justices shall order the defendant to be committed to the Supreme Court for trial. He must also be committed to the Supreme Court for trial if depositions have been taken

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<sup>(1)</sup> Justices Act 1959 S.56 (A).

and the evidence in the opinion of the justices is sufficient to put him on trial or raises a strong presumption of his guilt.<sup>(1)</sup>

If the defendant has pleaded guilty before the justices to an indictable offence, the justices must usually commit him to the Supreme Court for sentence instead of for trial<sup>(2)</sup>

Having made a general survey of the criminal jurisdiction of the Courts, it is now appropriate to consider the types of sentence which each Court may impose.

#### Non-custodial treatment.

#### Absolute and conditional discharge.

Courts of summary jurisdiction, including Children's Courts have power to discuss a complaint or charge in respect of any offence punishable by such court<sup>(3)</sup> without proceeding to conviction if having

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(1) Justices Act 1959 S.62 (as amended).

(2) Justices Act 1959 S.63.

(3) Re Stubbs 1947 S.R. N.S.W. p.329 appears to be authority in respect of summary offences, that although a fixed penalty may be prescribed, the Probation of Offenders Act may nevertheless be invoked because in such case, the Court does not proceed to conviction. It was also decided in Re: Stubbs, with reference to the New South Wales Crimes Act 1900 that the expressions "character", "antecedents", "age", "health", "mental condition" and "extenuating circumstances under which the offence was committed" should be regarded as being alternative and not cumulative.

regard to the character, antecedents, age, health or mental condition of the person charged, or the trivial nature of the offence or the extenuating circumstances under which such offence was committed, it is inexpedient to inflict any punishment. This power is used very frequently by the Children's Courts, particularly in the case of first offenders.

Alternatively, if the Court considers it is expedient to release the offender on probation it may discharge him conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on during such period, not exceeding three years, as may be specified in the order.<sup>(1)</sup>

The Supreme Court has no power to discharge offenders unconditionally though it has power to order conditional discharge both under the Criminal Code directly<sup>(2)</sup> and under the Probation of Offenders Act 1934. The latter power, however may only be exercised in "a proper case" and where the Court has elected to do so under Section 386 (1) (b) of the Code. A "proper case" may arise in respect of any indictable offence and whether the offender has been convicted on indictment or has been merely committed to the Supreme Court for sentence. As in the case of courts of summary jurisdiction, the Supreme Court may only deal with an offender under the Probation of Offenders Act 1934 if it considers it is

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(1) Probation of Offenders Act 1934 S.3 (1)

(2) Criminal Code 1924 S.386 1 (c) and (e).

inexpedient to inflict any punishment, or that it is expedient to release him on probation having regard to his character, antecedents, age, health or mental condition or to the extenuating circumstances under which the offence was committed. The condition of the discharge is that the offender shall enter into a recognizance with or without sureties to be of good behaviour and shall appear for sentence at any time during such period, not exceeding 3 years as may be specified in the order.<sup>(1)</sup>

Certain other conditions may be attached to the order whether it is made by the Supreme Court or by a court of summary jurisdiction: the offender may be directed to be under the supervision of a probation officer or other person specified in the order;<sup>(2)</sup> there may be conditions with respect to residence, abstention from intoxicating liquor or any other matters as the Court, having regard to the particular circumstances of the case may consider necessary for preventing a repetition of the same offence or the commission of other offences.<sup>(3)</sup>

The direct power to discharge an offender conditionally is contained in Section 386 (1) (c) of the Criminal Code 1924. This subsection provides as follows:-

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(1) Probation of Offenders Act 1934 S.3 (2)

(2) Probation of Offenders Act 1934 S.3 (2A)

(3) Probation of Offenders Act 1934 S.4 (2)



"If judgment is not arrested, the court may discharge such person upon his recognizance with such sureties, if any, as the judge may think necessary conditional that such person shall appear and receive judgment -

- (i) at some future sittings of the court to be specified therein; or
- (ii) in a proper case, whenever called upon."

It is further provided that in lieu of or in addition to passing sentence upon such person, the court may require an offender to enter into a recognizance, with or without sureties, to be of good behaviour for such period as the judge may require.<sup>(1)</sup> The period covered by any recognizance ordered under the Criminal Code shall not exceed 5 years though the same may be renewed if in the opinion of the judge, such course is necessary in the interests of justice. A recognizance entered into under S.386 (1) (c) may include a condition binding the offender to be of good behaviour for any period specified<sup>(2)</sup> but there is no provision in the Criminal Code for the attachment of other conditions to recognizances ordered under it. In fact, the Court does occasionally attempt to attach further conditions, but in view of the wording of the Code the validity of such conditions is a matter of considerable doubt.

Another common practice of the Supreme Court is to "mingle" sentences, for example, to purport to deal with an offender under the Probation of

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(1) Criminal Code 1924 S.386 (1) (e)

(2) Criminal Code 1924 S.386 (4)

Offenders Act and to pass sentence on him, but suspend the execution of such sentence on certain conditions. If a condition is breached, the question arises as to whether the offender was sentenced under the Criminal Code or dealt with under the Probation of Offenders Act and accordingly, which penalty is applicable.

Concern has recently arisen in Tasmania regarding the effectiveness of recognizances since the decision of Crawford J. in Rex v O'Neal (1963) Tas. (unreported). In that case, it was sought by the Crown that a recognizance should be declared forfeited because the offender was in breach of a good behaviour condition, having been convicted of resisting arrest and using indecent language in a public place.

Section 433 of the Criminal Code stipulates that one of the pre-requisites for forfeiture of a recognizance is that it should be produced. However, it is not the practice of the court to enter into written recognizances and instead the Clerk of the Court sought to give a certificate of conviction under the terms of the Evidence Act 1910. Unfortunately the relevant section<sup>(1)</sup> of that Act provides that where any person has been sentenced to any punishment or pecuniary fine by any court or judge or justice and it is necessary to prove such fact, evidence may be given by production of a certificate under that section.

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<sup>(1)</sup> Evidence Act 1910 S.76 (1) (B)

The section was held to be inapplicable because the accused had not been sentenced for his original offence, indeed, one of the conditions of the recognizance was that he should appear for sentence when called upon. Further, the accused had been dealt with under Section 386 (1) (b) of the Criminal Code and Section 3 (2) of the Probation of Offenders Act which refers to conditional discharge.

From a procedural point of view, this situation can be remedied quite easily by ensuring that written recognizances are prepared when sentences are passed. However, there are insidious side-effects whenever the Court is found in such a position; any deterrent value which the threat of punishment may have held is reduced to vanishing point. Other offenders subject to similar sentences are likely to treat Court orders lightly and without respect. Thus it is of fundamental importance that the Court should be able to enforce its own orders and that conditions it makes should be meaningful both to the offender and to anyone having supervision of him.

Frequently conditions are attached to recognizances that the offender shall commit "no crime of a similar nature" or "no serious crime of dishonesty" and other like conditions.<sup>(1)</sup>

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<sup>(1)</sup> In Rex v Breen (1963) Tas. (unreported), it was a condition of a suspended sentence that the defendant should not commit a "crime or offence involving intentional personal violence" and the defendant had thrown a glass of wine at a woman's face, hitting her with the glass. It was held by Crawford J. that as bodily injury was not intended, the condition was not broken.

These and similar phrases are likely to give rise to widely divergent interpretations and if there is an alleged breach, an enquiry is involved into the circumstances of it. Doubt also seems to arise as to whether a person who has been convicted may allege that he was wrongly convicted.

Although the Probation of Offenders Act does provide<sup>(1)</sup> that when a probation order is made, the Court shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe, there is no similar provision with regard to conditions attached to recognizances. There is also no legislative provision which requires the Courts to explain the conditions of the recognizance in ordinary language to the offender when he is sentenced. This is a matter which is deemed of considerable importance in certain other jurisdictions<sup>(3)</sup> and it is submitted the practice should be mandatory in the Tasmanian Courts.

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(1) Probation of Offenders Act 1934 S.4 (3)

(2) See English Criminal Justice Act 1948 S.3 and Victorian Crimes Act 1958 S.508 (5).

Fines, compensation and restitution.

These topics are considered together because from the point of view of the offender, at least, fines and orders for compensation or restitution are likely to have a similar effect upon him; the chief merit of each lies in its potential deterrent value.

Legislative provision for the imposition of fines is exceedingly common in Tasmania and frequently fines of specified amounts may be ordered as an alternative or in addition to fixed terms of imprisonment. As commented by Mr. S.W. Johnston in his survey of legislative sentencing in Tasmania, "There is no discernable policy whereby the words "or both" are tacked on, with the effect of changing a "fine or prison" sentence into a "fine and prison" sentence." He also observed the extreme inconsistency of the prison and fine correlations, prison terms being matched with anything from £10 to £500.<sup>(1)</sup>

Before the 1963 amendment to the Police Offences Acts 1935 and 1962, not only were many offences punishable by the imposition of fixed penalties but as observed by the Select Committee of the House of Assembly in 1962<sup>(2)</sup>, the penalties were frequently unreal and trivial.

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<sup>(1)</sup> Tasmanian University Law Review Vol. 1 No. 6. Sept. 1963 "Legislative Sentencing in Tasmania" at p. 787.

<sup>(2)</sup> Government White Paper para. 159.

The legislature evidently found this criticism convincing for the Police Offences Act 1963 increased many fixed penalties by doubling them while others were substituted by amounts which are even ten and in one case twenty times as large as they were under the previous legislation.

The Child Welfare Act 1960 confers upon special magistrates a somewhat wider discretion in so far as there is no provision for fines of specified amounts. There are, however, certain fixed maxima, for instance, a child under the age of 14 may not be fined more than £10<sup>(1)</sup> and a child between the ages of 14 and 17 may not be fined more than £50.<sup>(2)</sup>

At the Supreme Court level, a virtually unfettered discretion is conferred upon the judge with regard to the imposition of fines. Section 389 (3) of the Criminal Code provides: "Subject to the provisions of the Code or of any Statute and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years or by fine or by both such punishments and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case."<sup>(3)</sup>

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<sup>(1)</sup> Child Welfare Act 1960 SS.21 (1) 21 (4)

<sup>(2)</sup> Child Welfare Act 1960 SS.21 (4) and 27 (6). Similar recommendations were made in England by the Ingelby Committee in its report in 1961 (Cmnd 1191, para.57).

<sup>(3)</sup> S.397A. of the Criminal Code now provides for time to be allowed for the payment of fines and for the payment of fines by instalments at the discretion of the Supreme Court.

Provisions for restitution and compensation are scattered throughout Tasmanian legislation; there is no discernable policy governing when such orders may be made in addition to fines or when fines may be appropriated wholly or in part towards the complainant for compensation or costs.

Under the terms of the Code,<sup>(1)</sup> it is mandatory where the accused has been convicted of stealing, receiving stolen goods and certain other related offences, that the stolen property shall be returned to the owner unless falling within one of the specified exceptions. If the offender has sold the goods to a purchaser in good faith, any monies found on him at the time of apprehension may be used to reimburse the purchaser. There is a similar section in the Justices Act which relates to crimes triable summarily.<sup>(2)</sup>

There are various provisions for the compensation of victims and recent statutory amendments have increased the maxima amounts which may now be awarded. Section 425 (A) of the Criminal Code provides for orders to be made up to £500 in respect of crimes tried on indictment and in courts of petty sessions, orders may be made up to £250 if the hearing is before a police magistrate and up to £100 in other cases.<sup>(3)</sup>

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(1) Criminal Code 1924 S.424 (1).

(2) Justices Act 1959 S.72.

(3) Justices Act 1959 S.140 (as amended).

Offenders sentenced under the Probation of Offenders Act 1934 may also be ordered to pay damages for compensation or injury.<sup>(1)</sup> In the Children's Courts, children under 14 cannot be ordered to pay more than £10 and children between the ages of 14 and 17 cannot be ordered to pay more than £50.<sup>(2)</sup> A parent or guardian of a child who by wilful default or by neglecting to exercise proper care and guardianship of the child has contributed to the commission of an offence of which the child is guilty, may be ordered to pay damages which the child could have been ordered to pay.<sup>(3)</sup>

When a Court is considering an order for compensation, conflicting issues are likely to arise: on the one hand, the injustice suffered by the victim is beyond doubt and calls for some type of compensation; on the other hand, the offender may have no financial resources, he may be unable or unwilling to hold down a job for any length of time, he may have dependents to maintain or if he is sentenced to imprisonment, his earnings will be trivial at least during the period of his incarceration. Thus although the Court may desire to order compensation in the interests of the victim, it may not be practicable to do so, or the Court may have sincere doubts as to whether such an order would have any deterrent value at all.

A realisation of these conflicting issues has led to the introduction

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(1) Probation of Offenders Act 1934 (3).

(2) Child Welfare Act 1960 S.21.

(3) Child Welfare Act 1960 S.25 (b).



of Government insurance schemes in some jurisdictions<sup>(1)</sup> and such schemes seem to be the only satisfactory way to remedy the glaring injustices suffered by victims.

Somewhat different considerations arise in connection with fines and Courts are unlikely to be faced with conflicting moral issues. It is vital however that there should be no obligation upon any Court to impose a penalty, the exact amount of which has been prescribed by Statute. Conferring so little discretion upon the Courts makes it impossible for them to consider such matters as the offenders financial commitments, his earning capacity and his general circumstances unless the case is one in which the Probation of Offenders Act 1934 can be invoked. Cases inevitably arise where the sentencing Court considers that a fine is appropriate but not a fine of the amount prescribed by Statute.

The ideal situation is that the legislature should provide the Courts with guidance as to the amount of the fine by fixing a minimum and a maximum but the exact amount should be left to the discretion of the Courts. In this way the interests of the offender are safeguarded yet any deterrent value which known penalties have for the potential offender is not altogether

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(1) See for example the New Zealand Criminal Injuries Compensation Act 1963; "Compensation for victims of crimes of violence" (Cmd 2323) H.M.S.O. London and the Criminal Law Review May 1964 at p. 345.

lost; the ideal of guidance and flexibility is achieved.<sup>(1)</sup>

A corollary to this recommendation must emphasise the periodical need for statutory revision in adjusting the maxima and minima in accordance with such factors as the basic wage and the prevalence of any particular crime or offence.

Once the legislature has fixed the maxima and the minima amounts, there should be definite criteria to assist the Courts in deciding upon the exact amount of the fine. Such criteria have been provided by the American Law Institute in Section 702 of the Model Penal Code. It is of some interest that two of the most prominent factors which are referred to in this section are the ability of the offender to meet the fine and its possible deterrent value.

In conclusion, reference must be made to some recent research in England as to the effect of fines. In 1957, it was suggested that heavy fines might well be used more frequently as alternatives to imprisonment<sup>(2)</sup> although the proviso was added that fines should be carefully related to the means of the offender because non-payment would result in commitment to prison.

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(1) See S.37 of the Traffic Act 1925 (as amended) which provides for flexibility within set limitations. This section exemplifies the type of legislation which is recommended.

(2) "Alternatives to Short Terms of Imprisonment" H.M.S.O. London 1957.

More recently, the London Home Office has indicated that fines were followed by the fewest reconvictions compared with expected numbers, both for first offenders and for recidivists of almost all age groups.<sup>(1)</sup>

### Probation and Supervision.

As these two types of court order have much in common, it is convenient to consider them together. All courts of summary jurisdiction, including the children's courts may make supervision orders in respect of children they have found guilty of offences.<sup>(2)</sup> The Supreme Court has a similar power in respect of children convicted on indictment.<sup>(3)</sup>

Probation orders may also be made by courts having jurisdiction over children but this power is subject to the restriction that courts of summary jurisdiction may not make an order discharging the offender conditionally on his entering into a recognizance under the Probation of Offenders Act 1934 if he is under the age of 15 years.<sup>(4)</sup> It is also provided: "A recognizance entered into under the Probation of Offenders Act 1934 by a child may bind him to appear before a children's court,

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(1) "The Sentence of the Court" H.M.S.O. London 1964 a. p.49.

(2) Child Welfare Act 1960 S.23 (1) (b).

(3) Child Welfare Act 1960 S.28 (1) (a).

(4) Child Welfare Act 1960 S.22 (1).

notwithstanding that he may attain the age of 17 years before the time at which he may be required to appear before the Court in pursuance of the recognizance and where the Court before which any person is so bound to appear is a Children's Court, the attainment by that person of the age of 17 years does not deprive a Children's Court of jurisdiction to enforce his attendance and to deal with him in respect of any failure to observe the conditions of his recognizance or of jurisdiction to vary or discharge the recognizance." (1)

There does not appear to be any such restriction as to the minimum age at which the Supreme Court may place on probation a child who has been found guilty of an offence on indictment.

Thus apart from children under the age of 15 years, found guilty of an offence by a court of summary jurisdiction (which includes a children's court) it appears any offender may be dealt with under the Probation of Offenders Act 1934 provided the sentencer is of the opinion it is a proper case in which to do so. (2) The Act is so worded that probation must exist as a condition of a recognizance. Since the 1963 Amendment to the Probation of Offenders Act 1934, it is now provided that where a person has been convicted of an offence and the court has imposed a fine or term of imprisonment in respect thereof, it may also order that the offender

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(1) Child Welfare Act S.22 (2)

(2) See ante re absolute and conditional discharge.

enter into a recognizance with or without sureties to be on probation for such period as is specified in the order.<sup>(1)</sup> If a term of imprisonment has been imposed, the order shall take effect from the date of the offenders release.<sup>(2)</sup>

A Supervision order requires that the person to whom it relates, be under the supervision of such child welfare officer or probation officer as the Director of Social Welfare may from time to time direct. The Court may attach conditions to the order if it desires to do so and the order remains in force for such period, not exceeding three years as may be specified therein. This, however is subject to the reservation that a supervision order nevertheless terminates upon the child attaining the age of 18 years or becoming a ward of the State.<sup>(3)</sup> Thus a child between the ages of 17 and 18 years may be subject to orders of the Children's Court and an adult Court at one and the same time. It is submitted that this situation is undesirable insofar as youths who have been dealt with by an adult Court tend to be contemptuous of the Children's Court and its orders.

Probation orders are also restricted in duration to 3 years<sup>(4)</sup> and again, the Court has power to attach conditions to the recognizance as it sees fit in the particular circumstances of the case.<sup>(5)</sup> In some

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(1) Probation of Offenders Act 1934 S.2 (B).

(2) Probation of Offenders Act 1934 S.2 (C).

(3) Child Welfare Act 1960 S.36.

(4) Probation of Offenders Act 1934 S.3.(2).

(5) Probation of Offenders Act 1934 S.4 .(2).

jurisdictions, probation and welfare officers also have statutory power to attach conditions to orders; as the circumstances of the offender and the temptations to which he is exposed are likely to change with the passage of time, such power can be very useful.

Having considered the circumstances under which probation and supervision orders may be made, it is now relevant to discuss the circumstances which may bring about their termination.

Section 37 of the Child Welfare Act provides that the initiative shall be taken by the Director of Social Welfare:

"Where on the application of the Director, a Children's Court considers that the person to whom a supervision order relates:-

- (a) has failed to observe any of the conditions of the order or instructions given to him, or any conditions imposed on him by a child welfare officer or a probation officer in the exercise of the supervision that he has by virtue of the order; or
- (b) is living in conditions which are unsatisfactory the court may, if it considers that it is in the interests of the welfare of the child so to do, vary the supervision order or make such other order as could have been made at the time at which the supervision order was made, other than an order imposing a penalty or requiring the payment of any damages or costs."

The consequences of failure to observe conditions attached to a recognizance ordered by an Adult Court are likely to be more serious:

if the recognizance was ordered by a court of summary jurisdiction, without further proof of guilt, it may convict and sentence the offender for the original offence, or if the offender is still under the age of 18 and the Court could have previously made an order under the Child Welfare Act 1960, it may do so upon the occurrence of the breach.<sup>(1)</sup> Similar provisions are made in respect of a recognizance ordered by the Supreme Court, though if the recognizance was originally ordered in addition to a fine or term of imprisonment under S. 2B of the Probation of Offenders Act 1934, the Court is restricted upon the breach, to imposing a fine not exceeding £50 or a term of imprisonment not exceeding 6 months or both, as the Court shall think desirable.

Proceedings under these sections are not automatically initiated in the event of breach of conditions attached either to a supervision order or a probation order; frequently the breach is not serious and it is not in the interests either of the offender or the public to administer more than a severe warning. However, in the event of a breach occurring, it is important the offender shall not take the matter lightly or think he can repeat his misconduct without producing more drastic consequences.

The precise duties of probation and welfare officers are not defined by Statute; indeed it is altogether desirable that they should be given wide discretion as to the best way of fulfilling their undertakings.

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<sup>(1)</sup> Probation of Offenders Act 1934, S.6.

The essence of the Child Welfare Act 1960 is contained in Section 4 which directs:-

"Each child suspected of having committed, charged with, or found guilty of an offence shall be treated, not as a criminal but as a child who is or may have been misdirected or misguided....." It is this spirit which to a large extent permeates all functions carried out by welfare officers.

On the adult level, however, probation must contain more of a punitive element which should be proportionate to the offenders guilt. As the Wickersham Commission expressed it, probation is not merely: "letting the offender off."<sup>(1)</sup>

The Probation of Offenders Act 1934 does define the duties of a probation officer in a general way:-

It shall be the duty of a probation officer, subject to the direction of the court:-

(a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or subject thereto as the probation officer may think fit;

(b) to see that such person observes the conditions of his recognizance

(c) to report to the court as to the behaviour of such person

(d) to advise assist and befriend such person when necessary to

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<sup>(1)</sup> National Commission on Law Observance and Enforcements Reports No. 9 (Report on Penal Institutions, Probation and Parole) Washington Government Printing Office 1931 p. 185.



endeavour to find suitable employment and

(e) to carry out such other duties as may be prescribed or as the Court may in any case direct." (1)

However, the manner in which officers shall deal with each probationer must be left to their discretion for every case will present slightly different problems.

While the nature of the supervision or probation must take on a more punitive characteristic with the increasing criminal responsibility of the individual, it is highly desirable that this change should take place gradually. An offender who is treated as "misguided and misdirected" one moment and as a criminal the next is not likely to respond to such inconsistency.

The Advisory Council of Judges of the National Probation and Parole Association in 1957 made an interesting observation which stresses the responsibility of those concerned in the correctional field and particularly the sentencers themselves:-

"The success of an offender on probation, with corresponding benefits to the public, including the diminished prospect of his return to crime depends largely upon his understanding the implication of the disposition granted him. At the outset, an offender is apt to believe that

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(1) Probation of Offenders Act 1934 S.7 (2).

the suspension of the criminal sentence during the period of probation means the termination of his obligation to society for the crime committed. In imposing sentence, therefore, the judge should make clear precisely what is entailed by probation. He should remind the offender of the continuing power of the Court to direct the supervision of the probation rules and to determine with due process when the conditions of probation have been violated, that probation status may be revoked.... he should encourage the probationer to comply strictly with the terms of probation and resolve any doubts by conference with his probation officer. While the tone of his statement to the offender should be encouraging rather than threatening, he should not omit a specific warning of the consequences which would follow a breach of the terms of probation."<sup>(1)</sup>

The sentencer thus has an exacting role to fulfill and to strike the right note with the offender, he will need considerable information regarding his background history and ideally, an appreciation of the likely psychological effect of the sentence upon him.<sup>(2)</sup>

#### Suspension of licences.

There are various provisions to be found in the Statute book for

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(1) "Guides for Sentencing" 1957 National Probation and Parole Association, New York.

(2) See also p.18 ante and p. 169 post.

the disqualification of certain persons from holding licences of different sorts. The licences which are most frequently withheld or suspended are licences to drive motor vehicles and the Traffic Act 1925 as amended also contains provision for the indorsement of licences in certain cases.<sup>(1)</sup>

Section 41 of the Traffic Act 1925 now provides that if any person shall operate or attempt to operate or drive or have charge of a motor vehicle whilst under the influence of liquor or a drug, subject to certain minor exceptions, the Court before whom he is found guilty, in addition to any other penalty it imposes shall order him to be disqualified from obtaining or holding a drivers licence for such period as the Court shall determine, not being less than:-

- (i) 12 months on his first conviction, or
- (ii) 3 years on his second conviction.

If the offender has been twice previously convicted of such an offence, he is disqualified for obtaining a drivers licence unless the disqualification is removed by a police magistrate, though he may make an application to a police magistrate after 10 years from the date of the last conviction to have the disqualification removed. The police magistrate then has the discretion to remove the disqualification if he sees fit to do so.

Section 36 of the Traffic Act 1925 enables the Court, in the case of any offence having been committed by the driver of a motor vehicle under the Act, except under Section 41, in lieu of or in addition to imposing any

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<sup>(1)</sup> For other examples of Statutory provisions, see:- Firearms Act 1932 S.14 (3), Licensing Act 1932 ss. 99-102.

other penalty on him, to disqualify him from obtaining or holding a drivers licence for such period as the Court thinks fit.

Where any person is found guilty of an offence as a driver of a motor vehicle or under Section 41 of the Traffic Act 1925, the Court must cause particulars of the conviction to be endorsed on his licence.<sup>(1)</sup>

The provisions of the Traffic Act 1925 whilst being mandatory in respect of the disqualification of those convicted of certain offences under the influence of liquor or drugs, still give the courts discretion in fixing the precise period of the disqualification. Thus the courts have a certain measure of flexibility within limits fixed by the legislature. It is submitted that this principle is altogether deniable with regard to sentencing policies generally as it enables the courts to give due consideration to the individual circumstances of each offender.

In exercising their discretion with regard to the withholding and suspension of licences, one of the most important factors to be borne in mind by the sentencers, is the effect which the sentence will have upon the offender's livelihood. If the court will be virtually cutting off his means of support, the effect of withholding or suspending a licence will be much more severe than if it is merely causing him an inconvenience or preventing a leisure time activity.

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(1) Traffic Act 1925 S.36 (B).

Suspended Sentences.

The Criminal Code 1924, since amended in 1963, now provides that a judge of the Supreme Court in sentencing an offender found guilty of an indictable offence may:

Pass sentence upon the convicted person and upon such conditions as the judge may think fit -

- (i) suspend the execution of the sentence; or
- (ii) in the case of a sentence of imprisonment, suspend the further execution of the sentence after such term as he thinks fit."<sup>(1)</sup>

This provision, in terms of the Code, is an alternative to the various other powers which may be exercised by the Supreme Court under Section 386, and therefore there appears no authority for the "mingling" of sentences which frequently takes place, for example, putting an offender on probation under the Probation of Offenders Act 1934, imposing a fine on him and suspending a sentence of imprisonment.<sup>(2)</sup>

Theoretically at least, any type of sentence may be suspended though in practice it is almost invariably used in respect of terms of imprisonment. The power of suspending sentences is unique to the Supreme

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(1) Criminal Code 1924 S.386 (d).

(2) See post pp. 159 et seq.

Court, Courts of summary jurisdiction having no authority to do so.

The policy of suspending sentences has been the subject of considerable criticism in England; in 1952 the Advisory Council on the Treatment of Offenders made a report on the matter<sup>(1)</sup> when it was being considered it might be introduced into English penal law. The Council, after dealing with various arguments in favour of the system advised strongly against it.

The chief argument in favour of suspending sentences was that it was a more effective deterrent and was more easily understood by offenders than probation and the conditions attached thereto. The Council was entirely unimpressed by this line of reasoning and thought that if the terms of probation or conditional discharge could not be understood, neither could the meaning of a suspended sentence. They found no evidence to support the claim that the fear of a known penalty is more effective as a deterrent than the fear of an unknown penalty because different people react in different ways.

The Council also considered certain information which was available from other countries but did not find the material particularly valuable because there was no basis of comparison with the English system at that time. The evidence received from other countries apparently indicated

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(1) "Alternatives to Short Terms of Imprisonment" Report of the Advisory Council on the Treatment of Offenders H.M.S.O. London 1957. Appendix D.

their tendency to develop systems of probation out of the systems of suspended sentences, with which they started. This had certainly not been the case in Tasmania, although probation and suspended sentences are frequently mingled, there has been no development of the probation system out of the system of suspending sentences.

The Council saw two inherent difficulties in connection with suspended sentences, the first was the difficulty of not knowing whether the sentence would ever operate and if it did, not knowing the circumstances of the offender at that time. The second concerned the difficulty of bringing the sentence into operation. It was considered that if a Court sentencing for a following offence had the discretion as to whether or not to order the offender to serve the suspended sentence, the whole purpose of the system would be defeated anyway and any deterrent effect which might otherwise have existed would be lost.

With regard to suspended sentences combined with probation, the Council found that the two were contradictory rather than complimentary and the combination was definitely undesirable. The Council members were of the view that probation is, of its very essence, a positive form of treatment dependent upon the spirit of trust and co-operation between the probationer and the officer. If the probationer were also given a suspended sentence, he might well go through his probation in a negative spirit seeking to avoid the operation of the suspended sentence rather than build up a positive will to reform.

The Council also considered that the practice of suspending sentences could only have potential value where there could be no effective supervision and it was thought that the Courts might be unable to recognise cases when probation would be more effective.

It is submitted that the only serious objection raised by the Council concerns the bringing into operation of the sentence.<sup>(1)</sup> Quite clearly, the circumstances of the offender and the environmental pressures bearing on him may alter between the time the sentence is suspended and the time it is sought to bring it into operation. It may not be in the best interests of the public or the offender to enforce the sentence. The Council claim that if the sentence does not fall automatically on the offender in the event of breach of one of the conditions, there is no point in the suspended sentence. But is this so? Very few so-called fixed sentences are automatically applied, there is usually an alternative course of action available. The Police do not always commence proceedings if an offence occurs, they often consider a warning is likely to achieve the same effect; Courts of summary jurisdiction do not lose their authority to place offenders on probation because there is a fixed penalty for an offence; even the death penalty is not automatically applied on convictions for murder and treason for there still remains the royal prerogative to recommend mercy.

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(1) In Tasmania, there is a difference of view amongst the Supreme Court Judges as to whether, in the event of a suspended sentence being followed by a breach of one of the conditions attached to it, the Court has a discretion to withhold execution of the sentence.



Certainly the Courts should be reluctant not to fulfill their threats but nevertheless their primary purpose is to protect the public and how this can best be achieved depends upon the individual circumstances of each case. The Courts in exercising their sentencing powers need the two attributes of guidance tempered with flexibility.

The Council's reasoning that probation and suspended sentences are necessarily contradictory of one another is also thought to be fallacious. The mere attachment of conditions to the probation order might produce the "negative spirit" which the Council feared to be characteristic of those receiving suspended sentences. Admittedly the sanction in the case of a suspended sentence is generally stronger and it may be more appropriate in the case of an older or more mature offender who is unlikely or has failed to respond to probation. However there are also occasions where both forms of sentence are appropriate; this may arise for example in the case of an impressionable easily led youth who might respond favourably to supervision but nevertheless needs a stronger sanction as well.

With regard to the Council's objection that the Courts might be unable to recognise cases where suspended sentences are more appropriate than probation orders; there is no reason to suppose that the Courts are less capable of distinguishing these cases than they are of performing any other of their sentencing powers.

It is submitted that the policy of suspending sentences can be of

constructive use in Tasmania's penal programme but, as with every other form of sentence, its effectiveness depends to a large extent upon the circumstances in which it is applied.<sup>(1)</sup>

Finally a procedural difficulty should be mentioned: under the Criminal Code 1924,<sup>(2)</sup> notice of appeal or notice of application for leave to appeal should be given within 14 days from the date of conviction or sentence. The offender who receives a suspended sentence may not wish to appeal unless the sentence is put into operation but there is no legislative provision to meet this contingency.

#### Corporal punishment.

Although corporal punishment for a criminal offence has not taken place for many years in Tasmania, the provision for it still remains in the Criminal Code:-<sup>(3)</sup>

"In the case of a male person convicted of any crime not punishable with death, in the commission of which such person has inflicted serious personal violence on any person, the sentence may, in addition to any other punishment, include an order that the person convicted shall be whipped once with such number of strokes or lashes, with such instrument, in such manner and at such time not being more than 6 months after the sentence,

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(1) But see p.177 post concerning the use of suspended sentences alone.

(2) Criminal Code 1924 S.407.

(3) Criminal Code 1924 S.389 (6).

as the judge may direct."

It is interesting to note that although modern research indicates that the deterrent value of corporal punishment is highly doubtful and it is now generally condemned by those in closest touch with offenders, a select Committee of the House of Assembly in Tasmania nevertheless recommended the legislative provision should remain unchanged.<sup>(1)</sup> The Committee expressed its belief that "there are cases where whipping is the most salutary method of dealing with offenders, but the physical and mental characteristics of the individual must first be taken into account."

There seem to be no justifiable grounds for this conclusion, indeed many enquiries have produced the opposite findings. In England, corporal punishment was abolished by the Criminal Justice Act 1948 but subsequently there was a certain amount of agitation for its reintroduction. The Advisory Council on the Treatment of Offenders made a report in 1960<sup>(2)</sup> and recommended that it should not be reintroduced. The Council based its opinion on a number of grounds but emphasised particularly that corporal punishment can only be justified if there is a reasonable assurance that it will substantially reduce crime and afford a real protection to potential victims; the Council found that there could be no such assurance

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(1) Government White Paper on "Police Matters in Tasmania" 1962 para.200.

(2) "Corporal Punishment" 1960 (Cmnd 1213) H.M.S.O.

and that there is no evidence that corporal punishment is an especially effective deterrent either to those who have received it or to others.

Another powerful argument advanced by the Council against corporal punishment is the delay involved between the offence and the infliction of the punishment and it was observed that this is especially undesirable in the case of young offenders. The members of the Council considered:

"the objections to delay lie not so much in uncertainty about whether corporal punishment will eventually be inflicted as in the bad psychological effects of administering a drastic punishment of this kind so long after the offence to which it relates."<sup>(1)</sup>

Arguments based on the efficacy of corporal punishment in homes and in schools were thought to be irrelevant. It was observed that: "parents (except those who use violence excessively or indiscriminately) and school-teachers know their boys and how they are likely to react to corporal punishment. The punishment is inflicted soon after the offence in respect of which it is given and usually by the person who has made the decision to inflict it. The boy will usually have affection or at least respect for the person who beats him and because of their continuing relationship, there is abundant opportunity for reconciliation. These conditions are not and cannot be fulfilled when that penalty is imposed

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<sup>(1)</sup> Para.68.

by the Courts and our conclusion as to judicial corporal punishment has no bearing on the wholly different question of corporal punishment in the home and in schools, which is outside our terms of reference."<sup>(1)</sup>

### State Wardship and the Institutional Care of Juveniles.

An order declaring a child to be a ward of the State may occur if he has been found guilty of an offence by a Court of summary jurisdiction<sup>(2)</sup> or of an indictable offence by the Supreme Court<sup>(3)</sup> or if he is found by a Children's Court to be uncontrolled or neglected.<sup>(4)</sup> In all cases, it is an alternative to making a supervision order. No Court has power to make a supervision order and to make an order declaring a child to be a ward of State at the same time.

Since the 1963 amendment to the Child Welfare Act, both Courts of summary jurisdiction and the Supreme Court have been empowered also to make orders that the child shall be detained in an institution, though the Act does not confer upon them the right to select the Institution.<sup>(5)</sup>

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<sup>(1)</sup> Para.15.

<sup>(2)</sup> Child Welfare Act 1960 S.23 (1) (c).

<sup>(3)</sup> Child Welfare Act 1960 S.28 (1) (b).

<sup>(4)</sup> Child Welfare Act 1960 S.34 (1) (b).

<sup>(5)</sup> Child Welfare Act 1960 Ss. 5 (1) (A) and 28 (1) (b). Under the Infants Welfare Act 1935, which was repealed by the Child Welfare Act 1960, the courts had power to commit a child to an institution without declaring him to be a ward of the State.

Once a child has been declared a ward of the State and unless the Court has made an order directing he shall be detained in an Institution, the Director of Social Welfare has a wide discretion as to his care by virtue of Section 46 of the Child Welfare Act 1960:-

- "(1) Subject to this Act, the Director shall, to the exclusion of the father, the mother and every other guardian, become and be the guardian of the person and estate of a person who is a ward of the State for so long as that person remains a ward of the State.
- (2) Subject to this Act, the Director may provide for the care and maintenance of the ward of the State -
  - (a) by boarding him out with a suitable person.
  - (b) by placing him in an institution; or
  - (c) by apprenticing him to or placing him in the employment of a suitable person.
- (3) Nothing in this Section prevents the Director from allowing the care and maintenance of a ward of the State to be taken over by and allowing him to be under the control of a parent relative or friend or other suitable person in a case where it appears to the Director to be for the benefit of the ward of the State.
- (4) The Director may be a party to indentures of apprenticeship binding upon a ward of the State during the currency of those indentures and the Director continues to be bound by those indentures notwithstanding that he ceases to be the guardian

of the ward of the State."

The tendency in Tasmania in recent years has been to use institutional care only as a last resort; foster homes have been found for as many State Wards as practicable though of course neglected children are more likely to be placed within a private family setting than those who have been found guilty of committing offences or are uncontrolled.

State wardship generally continues until the child attains the age of 18 years, though this position is flexible insofar as it may be terminated earlier or extended if necessary. <sup>(1)</sup>

In recognition of the fact that State wardship is a rather drastic measure, the Child Welfare Act 1960 provides for the remand of children for periods up to 3 months from the time they were found guilty of committing offences. This power of the Courts can be exceedingly useful for it enables the placement of a child in a receiving home or other suitable place where his behaviour can be properly observed and medical, psychological and psychiatric examinations can be made. In the meantime, his home and school situations can be thoroughly investigated with a view to counselling those having charge of the child and relieving tension which may have a deleterious effect upon him. The precise purpose of this power has not always been thoroughly understood and occasionally it has been used where the Courts desired to give a "short sharp shock". As the State has no institution apart from the Gaol, which is competent to provide this treatment, little can be achieved in this direction at the present time.

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<sup>(1)</sup> Child Welfare Act 1960 S. 45.

A Court of summary jurisdiction, including a Children's Court may sentence a child over the age of 16 years to imprisonment but it shall not impose on him a term that exceeds or terms which in the aggregate, exceed, 2 years.<sup>(1)</sup> If a child is sentenced to imprisonment, he will be detained in such place and under such conditions as the Chief Secretary may direct. Further the Governor may at any time make an order that he shall be released on licence which may be subject to conditions as thought fit and may be revoked if necessary.<sup>(2)</sup>

In practice, the powers which are most frequently exercised by the Children's Courts are those which enable them to admonish and discharge, to make supervision orders and to make orders of State Wardship. Compared with other jurisdictions, the powers of the Children's Courts in disposing with cases are very restricted and two factors seem to contribute largely to this situation: firstly the size of the State and the number of juveniles involved has not encouraged the development of

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(1) Child Welfare Act 1960 S.21 (1) and (1) (A). This section replaces that in the Infants Welfare Act 1935 which provided that a child over the age of 14 years could be imprisoned but in no case for a longer term than 3 months (Section 46 (1) (f)).

Imprisonment in England for offenders under the age of 17 years has been abolished by the Children and Young Persons Act 1963. With the extension of other methods of treatment of juveniles, particularly detention centres, it is anticipated that imprisonment of those under the age of 21 years will become increasingly rare.

(2) Child Welfare Act 1960 S.30.



alternative methods of treatment and secondly, the wide discretion conferred upon administrative bodies has decreased the powers of the Courts. Although a greater degree of control by the Courts may be desirable, there are two pre-requisites which are complementary to the above mentioned factors namely, firstly we must increase our facilities for treatment, primarily at the non-custodial level and secondly those passing sentence on children must be equipped both in knowledge and experience to assume this heavy responsibility. Both these topics are considered in some detail at a later stage.<sup>(1)</sup>

#### The Treatment of Sexual Offenders.

The Sexual Offences Act 1951 was a remarkably clumsy piece of legislation providing an elaborate procedure for the commitment of offenders under it. However, the Act has been substantially repealed by the Mental Health Act 1963.

The only sections which remain are sections 1 and 3. Section 3 provides that where anyone with indecent intent assaults a child under the age of 14 years or any female, he shall be liable to a fine of £20 or imprisonment for 6 months and in addition, may be required to enter into a recognizance with such sureties as the Court thinks necessary to be of

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<sup>(1)</sup> See Part IV pp. 219 et seq and pp. 241 et seq.

good behaviour for any period not exceeding 6 months. If the Court finds the assault is proved but not the necessary intent, the above section does not apply.<sup>(1)</sup>

Apart from the provision referred to above, there are no special powers available for the use of the Court in dealing with sexual offenders. If the offenders come within the ambit of the Mental Health Act, an appropriate order can be made, otherwise they are liable to be dealt with in the same manner as ordinary offenders.

In 1957, the Cambridge Department of Criminal Science undertook an extensive piece of research into the problems related to sexual offenders.<sup>(2)</sup> The possibility of amending the law with regard to the treatment of sexual offenders was considered at some length and it was admitted that "after investigating more than 3000 cases, the Department is no nearer to a constructive recommendation for the general treatment of sexual offenders than it was when it began its enquiries. The most it can do is to refer to some of the findings of facts which emerged and suggest that the treatment of the so-called sexual offender by the courts cannot be easily separated from the vast problem of the treatment of offenders generally."<sup>(3)</sup>

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(1) Sexual Offences Act 1951 s. 3 (4).

(2) "Sexual Offenders" A Report of the Cambridge Dept. of Criminal Science 1957.

(3) p. 435 op. cit.

The courts were found not to be generally faced with the persistent sexual offender, and when they were so faced, it was as frequently with offenders who had records of larceny, receiving and housebreaking in addition to their sexual offences, as with exclusively sexual offenders. This appears to be confirmed by the survey referred to in Part III, but the small number of cases involved prevents definite conclusion being reached in this respect.

A Departmental Committee in England was set up in 1925<sup>(1)</sup> and it reported: "In cases of indecent exposure, in cases of gross indecency and in cases of indecent exposure coupled with occasional offences of indecent assault, the lists of previous convictions are sometimes very long, the offence has been persistently committed over very many years and no punishment appears to have acted as a deterrent." The Cambridge Department found itself in substantial agreement with this statement. It was suggested that more use might profitably be made of preventive detention but this practice has been generally disapproved and it has now been recommended that preventive detention should be abolished.<sup>(2)</sup>

The Department confirmed the findings of the 1925 Committee that consideration should be given by those in authority to the possibility of the prolonged detention in suitable institutions of those who repeatedly

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(1) Cmd. 2561 para.83.

(2) A Report on the Advisory Council on the Treatment of Offenders 1963.

commit indecent offences against young persons and "until such institutions are established, the Committee would not oppose longer sentences in prison provided that psychiatric treatment is being given." The Department added the corollary that special forms of treatment should not be confined to offenders convicted of "Sexual offences" in the legal and statistical meaning of the phrase and that offenders convicted of "sexual offences" should not necessarily be subjected to the special treatment.

Castration has been used in some countries, not primarily as a penal measure, but as medical treatment and in June 1953, Dr. Brenner read a paper before the Norwegian Association of Criminal lawyers and Criminologists on his researches into the effects of legal castration over a period of 15 years. Only a small percentage of sexual offenders had been castrated and as a means of checking recidivism, the operation proved itself almost 100% successful.

In Norway, the operation is only performed at the request of the offender and sometimes there was evidence of resentment against the doctor when the operation had been performed. Generally, however the offenders appeared to regard it as the lesser of the evils. Dr. Brenner's main conclusion was that castration in some cases is the most adequate medical treatment but it should be applied in the last resort and all cases require very careful examination before the operation is permitted. It is much better to castrate too few than too many.

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(1) "Sexual Offenders" op cit. p.476.

At the present time there are no definite and conclusive findings regarding the most effective and desirable treatment of sexual offenders and until research produces some definite progress in this direction, it is futile to propose legislative amendments.

#### The Treatment of Mentally Disabled Offenders.

By virtue of Sections 48 and 49 of the Mental Health Act 1963, where the Courts have power to sentence an offender to imprisonment, they may make a hospital order or guardianship order in respect of him. Briefly, the effect of a hospital order is to commit an offender to an institution which may be either a mental hospital or a general hospital. The offender may be discharged at any time on compliance with the necessary procedure unless he is also subject to a restriction order.<sup>(1)</sup> Guardianship orders transfer the offender into the guardianship of the person named in the order and the guardian may then exercise, to the exclusion of any other person, all such powers as would be exercisable by him in relation to the offender if he were the father of the offender and the offender had not attained the age of 14 years.<sup>(2)</sup>

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(1) These provisions are similar to S. 4 of the Mental Deficiency Act 1920  
(2) which is repealed by the Mental Health Act 1963.

The Mental Health Act 1963 provides for the setting up of a Guardianship Board<sup>(1)</sup> and a Mental Health Review Tribunal.<sup>(2)</sup> The Board may itself be appointed guardian but no guardianship order shall be made until the Court is satisfied that the prospective guardian, whether it is the Board or a private individual, is willing to receive the offender into guardianship.<sup>(3)</sup>

Hospital orders and guardianship orders may be made by the Supreme Court in addition to or in lieu of any other powers exercisable by it<sup>(4)</sup> and there is a similar provision with regard to Children's Courts.<sup>(5)</sup> This is subject to the reservation, however, that a guardianship order shall not be made in respect of an offender who is serving a sentence of imprisonment nor shall a Court, when making a guardianship order, also pass a sentence of imprisonment on him unless the execution is suspended.<sup>(6)</sup> Courts of summary jurisdiction have more limited power to make other orders at the same time as making hospital or guardianship orders<sup>(7)</sup>; however, if an offender has attained the age of 14 years and the usual medical evidence

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(1) Mental Health Act 1963 S.8.

(2) Mental Health Act 1963 S.9.

(3) Mental Health Act 1963 S.51 (4).

(4) Mental Health Act 1963 S.48.

(5) Mental Health Act 1963 S.50.

(6) Mental Health Act 1963 S.55 (5).

(7) Mental Health Act 1963 S.49 (3).

which is referred to below, is satisfied, they may refer the case to the Supreme Court if they consider such action appropriate in view of the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large.

Before making a hospital or guardianship order, the Court must be satisfied:-

- (a) On the evidence of two medical practitioners that the person is suffering from a mental illness, psychopathic disorder, subnormality or severe subnormality of such a degree which warrants his detention in a hospital for medical treatment or reception into guardianship.
- (b) That it is expedient that such order should be made having regard to the circumstances and
- (c) Arrangements have been made for his admission to a hospital within a period of 28 days from the date of making the order<sup>(1)</sup>.

A restriction order or a sentence of imprisonment may not be made or passed by the Supreme Court in addition to a hospital order unless both doctors have given oral evidence before the Court.<sup>(2)</sup> Further, no hospital order or guardianship order shall be made at all unless the offender is described by both of the doctors as suffering from the same form of disorder, whether or not he is also described as suffering from

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(1) Mental Health Act 1963 S.51.

(2) Mental Health Act 1963 S.51 (2)

another type of disorder.<sup>(1)</sup>

The effect of hospital and guardianship orders.

The fact that a sentence of imprisonment has been imposed to run consecutively or concurrently with a hospital order does not in any way limit the powers and authorities which may be exercised by hospital orders generally.<sup>(2)</sup>

If a hospital order is in force in respect of a person who has entered into a recognizance under the Probation of Offenders Act 1934, no proceedings may be taken for the alleged breach of conditions during the continuance of the hospital order.<sup>(3)</sup> If a guardianship order is made in respect of a person who has entered into a recognizance under the Probation of Offenders Act 1934, it shall be deemed discharged till a contrary order is made.<sup>(4)</sup>

Discharge.

If no restriction order has been made, an offender subject to a

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(1) Mental Health Act 1963 S.51 (3).

(2) Mental Health Act 1963 S.55 (1).

(3) Mental Health Act 1963 S.57 (1).

(4) Mental Health Act 1963 S.57 (3).



guardianship order or a hospital order may be kept subject to the guardianship or detained for a period not exceeding one year unless authority for the renewal of the order is obtained.<sup>(1)</sup> Such authority may be renewed for a further period of one year and at the expiration of that, for a further period of 2 years.<sup>(2)</sup>

In addition to discharge following the expiry of the terms referred to, an offender may be discharged if a successful application is made by him or on his behalf, to the Mental Health Review Tribunal. Such applications may be made by the offender within 6 months from the date of the relevant order, if there were no restrictions, or six months from the date of any restriction being removed or on which he attains the age of 16 years, whichever is the later. An application by a nearest relative may be made within a period of 12 months from the date the offender ceased to be subject to a restriction order or from the date of the relevant order. Such applications may be made within any subsequent periods of 12 months.<sup>(3)</sup>

When any such applications are made, the Tribunal then has a discretion which it may exercise to discharge the offender provided it

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<sup>(1)</sup> Mental Health Act 1963 S.32 (1).

<sup>(2)</sup> Mental Health Act 1963 S.32 (2) . Under the Mental Deficiency Act 1920, the corresponding section (S.29) provided for an original period of one year followed by periods of one year and three years respectively.

<sup>(3)</sup> Mental Health Act 1963 S.66 (9).

is satisfied he is not then suffering from a mental illness, psychopathic disorder, subnormality or severe subnormality and generally that it is not necessary in the interests of Society or the offender himself that he should be detained further or remain subject to a guardianship order.

Transfer of persons in custody.

The Attorney-General may issue a warrant for the removal of an offender to a specified hospital if he considers it expedient having regard to public interests and all the circumstances.<sup>(1)</sup> Such direction is referred to as a transfer direction and the Attorney General is also empowered to make restriction directions which are similar to restriction orders save that in the case of a person serving a term of imprisonment at the expiration of that term a restriction direction ceases to have effect.<sup>(2)</sup> The power of the Attorney General to make such transfer and restriction directions may only be exercised after obtaining medical reports as required by the Act.

Restriction Orders.

The Supreme Court may make a restriction order in addition to a hospital order by virtue of Section 48 (2) of the Mental Health Act 1963, if it seems, having regard to the nature of the offence, the antecedents

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<sup>(1)</sup> Mental Health Act 1963 S.59 (1).

<sup>(2)</sup> Mental Health Act 1963 S.60 (3).

of the offender and the risk of his committing further offences if set at large during the continuance of the hospital order, it is necessary to do so for the sake of public protection.

If a restriction order is made, the offender may not be transferred into guardianship or to another hospital or be granted leave from hospital without having first obtained the consent of the Attorney General.<sup>(1)</sup> Further, an offender subject to a restriction order may not apply to the Tribunal to be discharged, nor does the order expire in the manner of other orders.<sup>(2)</sup>

The offender may, however make a written request to the Attorney General to refer to the Tribunal for its advice concerning him, but not until one year after the original order was made and thereafter only one request may be made during every successive period of 2 years.<sup>(3)</sup>

On the recommendation of the Tribunal and if the offender is not liable to serve a term of imprisonment, the Governor may make an order to remove the restriction, provided he is satisfied it is no longer needed for the protection of the public. There is a similar provision with regard to restriction directions if the hospital direction is discharged

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(1) Mental Health Act 1963 S.67.

(2) Mental Health Act 1963 S.68.

(3) Mental Health Act 1963 S.68.

unless the offender was sentenced to serve an indeterminate sentence.

The Governor also has the power of conditionally discharging an offender on the recommendation of the Tribunal.

The general form of the Tasmanian Mental Health Act 1963 follows the English Mental Health Act 1959. There is, however, one major difference between the two enactments; the Tasmanian Act provides for hospital or guardianship orders being made in addition to or in lieu of other sentences, subject to certain exceptions whereas the English Act lays down that the courts have no power to make a hospital or guardianship order in respect of an offender in addition to passing a sentence of imprisonment on him, imposing a fine or making a probation order.<sup>(1)</sup>

In conferring on the courts the wider powers of sentencing mentally disabled offenders, the Tasmanian Mental Health Act 1963 recognizes in principle that there may be partial responsibility for criminal behaviour, that is to say that although an offender may be suffering from a form of mental disorder, he may nevertheless be capable or partly capable of understanding the physical character of his act or omission or knowing that such act or omission was one which he ought

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<sup>(1)</sup> English Mental Health Act 1959 S.60 (6).

not to do or to make. (1)

Section 16 of the Criminal Code 1924 combines the notorious M'Naghten Rules with the irresistible impulse test:-

"(16) (1) A person is not criminally responsible for an act or omission made by him -

(a) when afflicted with mental disease to such an extent to render him incapable of -

(i) understanding the physical character of such act or omission; or

(ii) knowing that such act or omission was one which he ought not to do or make; or

(b) when such act or omission was done or made under an impulse, which by reason of mental disease, he was in substance deprived of any power to resist.

(2) The fact that a person was, at the time at which he is

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(1) While the recognition of partial responsibility in any form is a welcome innovation, the actual wording of the Mental Health Act 1963 may give rise to practical difficulties in the future.

The Act does not impair the power of the Courts to impose other forms of sentence, except as expressly mentioned. If the Courts make hospital orders to be followed by periods of imprisonment, it is likely that the benefit of hospital treatment will be undermined seriously by the subsequent prison sentence.

Where a hospital order is appropriate, it might be preferable to give the Court the right to review the case at the termination of such order and then to impose a gaol sentence if the offender's medical advisers consider such action would not destroy the benefit of the hospital treatment.

alleged to have done an act or made an omission, incapable of controlling his conduct generally, is relevant to the question whether he did such act or made such omission under an impulse which by reason of mental disease he was in substance deprived of any power to resist.

- (3) A person whose mind at the time of his doing an act or making an omission is effected by a delusion on some specific matter, but who is not otherwise exempted from criminal responsibility under the foregoing provisions of this section is criminally responsible for the act or omission to the same extent as if the fact which he was induced by such delusion to believe to exist really existed.
- (4) For the purpose of this section, the term "mental disease" includes natural imbecility."

The M'Naghten rules have exercised a profound influence on the development of criminal law and have placed a great gulf between the two disciplines of law and psychiatry. The rules themselves were pronounced by the House of Lords in 1843 after the public concern following the acquittal of the paranoiac, M'Naghten, for the murder of Sir Robert Peel's Secretary. Although the rules constituted only an advisory opinion given by the judges of England at that time, they have been treated for many years with great reverence by the legal profession, irrespective of the growth of knowledge of psychiatry and neighbouring sciences.

Psychiatrists claim that in using the M'Naghten rules, they are asked to assume that rationality is virtually an isolated component of mental life which an individual at some particular point in time either possesses or lacks, completely disregarding the enormous bulk of evidence from modern psychology that people can be rational in many areas but totally influenced by powerful largely or wholly unconscious and irrational motives in other aspects of living. Perhaps criticisms of this nature are exaggerated but there are nevertheless justifiable grounds for dissatisfaction with the present state of the law. Professor Glueck has recently examined the areas of misunderstanding between lawyers and psychiatrists and considers:-

"The prevailing legal tests tend artificially to limit and distort the presentation of the clinical picture as the examining psychiatrist has seen it, whilst demanding of him dogmatic answers to issues that belong rather to the concededly fallible but unavoidable judgment of a lay jury; namely the relation of psychiatric findings about the accused to the presence or absence in him of legal responsibility in respect to the specific criminal act." (1)

However, through the cloud of misunderstanding and distrust between the two professions, in recent years there have been indications of a more harmonious future ahead. The American Law Institute's Model

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(1) "Law and Psychiatry - Cold War or Entente Cordiale?" Sheldon Glueck 1962 Tavistock Publications at p.61.

Penal Code Section 4.01 provides as follows:-

- "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law.
- (2) As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

The terms of this provision are also the subject of criticism in some circles where it is said that it does not go far enough but at least it lacks the extreme "black or white" element of the M'Naghten rules and gives more flexibility. Another welcome provision of the Model Penal Code is that the psychiatrist shall be permitted to make "any explanation reasonably serving to clarify his diagnosis and opinion."<sup>(1)</sup>

In England also, there have been certain concessions made to psychiatric development. The English Homicide Act 1957 Section 2 (1) permits the defence of diminished responsibility where the charge is one of homicide. There seems no logical reason why this defence should be limited to homicide but at least the step taken by the legislature is a progressive one. The English Criminal Justice Act 1948 Section 4 enables

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<sup>(1)</sup> Model Penal Code Section 4.07 (4).



courts to include in probation orders a condition that the offender should accept medical treatment for the improvement of his mental condition. The provision of this section to some extent modifies the effect of the restriction in the English Mental Health Act 1959 that prevents a court from passing a sentence of imprisonment, imposing a fine or making a probation order when making a hospital or guardianship order.<sup>(1)</sup>

With the increased dissatisfaction over the last few decades concerning the rigidity of the M'Naghten rules and the new legislative provisions for dealing with those who are convicted by the Courts but are nevertheless suffering from some form of mental disorder, there is real hope for a better and more tolerant relationship between the law and psychiatry. With an improved understanding between these two disciplines, the lot of the mentally disabled offender can hardly fail to improve.

#### The Treatment of Inebriates.

The Inebriates Act 1885 provides for the apprehension of an habitual drunkard on his own application<sup>(2)</sup> or on the application of a

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(1) English Mental Health Act 1959 S.60 (6) and see "Probation and Mental Treatment" Max Grünhut 1963. Tavistock Publications.

(2) Inebriates Act 1885 S.21.

relative or friend.<sup>(1)</sup>

If the inebriate has made an application himself to a justice, such justice, if satisfied the applicant has habitually used excessive quantities of intoxicating liquor and that he fully understands the nature of his application, may order the apprehension of such person, his conveyance to some retreat and his reception detention and curative treatment there for a term not exceeding 12 months.

The application of a relation or friend must be made to a judge in chambers, police magistrate or two justices and if the application is reasonable, the inebriate will be summoned to show cause why he should not be committed to a retreat. On the hearing of the summons, an order may be made for the inebriate to be committed to a retreat if two medical practitioners certify in writing that he requires curative treatment and it appears by reason of his abuse of intoxicating liquor he is unable to control himself, or is not supporting his family, or is incapable of managing his affairs, or is dangerous to himself or to others, or is suffering under or recovering from delirium tremens or chronic alcoholism or is in imminent danger of death from habitual drunkenness. An order made pursuant to this provision authorises the reception detention and curative treatment of the inebriate for a term not exceeding 12 months.

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<sup>(1)</sup> Inebriates Act 1885 S.22.

The Inebriate Hospitals Act 1892 provides for the setting up of hospitals or parts of hospitals for the care of inebriates.<sup>(1)</sup> In fact, there are no separate institutions for these persons, most of them being accommodated in special wards at Lachlan Park Hospital.

The Inebriate Hospitals Act contains very similar provisions for the committal of inebriates to hospital as those contained in the Inebriates Act for their committal to retreats; under the former Act, application may be made by the inebriate himself or by a relative or friend. As in the case of the Inebriates Act, the procedure is rather more complex if the application is made by a relative or friend rather than by the inebriate himself. The only substantial difference between the provisions of the two Acts is that committals to a retreat under the Inebriates Act may be for a period of up to 12 months whereas committals under the Inebriate Hospitals Act to a hospital may only be for periods up to 3 months.

The problem of the alcoholic offender cannot be considered in isolation from the vast problem of the alcoholic though the Advisory Council on the Treatment of Offenders in England in 1957 emphasised the need to distinguish between cases of drunkenness where there is addiction to liquor and cases where there is no such addiction.<sup>(2)</sup>

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(1) Inebriate Hospitals Act 1892 S.3.

(2) "Alternatives to Short Terms of Imprisonment" Report of the Advisory Council on the Treatment of Offenders H.M.S.O. London 1957 paras. 31 and 32.

In the case of the latter, the Council saw no reason why the range of sentences available to the Courts should be any different from those available for any other anti-social offences. It was considered that although imprisonment for a very short term might well be a useless operation it would still have to remain the ultimate sanction. It was suggested that increased fines might reduce the number of offences committed by this type of offender and more frequent use of recognizances to be of good behaviour might have a like effect.

The Council found that the addicts presented a very different problem and their problem was more of a social nature than a penal nature. Imprisonment of these offenders was considered unsatisfactory and the English reformatories for inebriates were found to have failed altogether in curing alcoholics. Unfortunately the Council found itself unable to make any recommendations regarding the treatment of these offenders beyond the range of sentences then available to the Courts, though it was admitted that in the occasional case, where home enquiries made by a probation officer indicated that the offender is likely to be responsive, probation might be tried especially where residential treatment could be arranged, for example under a requirement to undergo treatment for a mental condition.

The findings of the Council are inconclusive and unsatisfactory; even if it is conceded that offenders who are not addicted to liquor should be treated in the same manner as ordinary offenders, distinguishing between

offenders who are and those who are not addicted to liquor is not a particularly easy task for the Courts; indeed, it is sometimes claimed that only the addict himself knows of his condition.

It is hoped that further research will be directed towards alcoholism generally and that some light will soon be shed upon the most satisfactory methods of treatment. Until there is more knowledge generally within this field, legislative amendments can be of no avail.

#### Imprisonment.

#### Definite Sentences.

In this context, definite sentences include all those terms of imprisonment where the offender is sentenced to prison by a Court for a fixed period. Although an offender may be sentenced for a fixed term, he may nevertheless be granted parole at the discretion of the Controller of Prisons or be granted a remission of sentence.

Remissions cannot exceed one quarter of the original term imposed and in no case shall reduce a gaol term to less than 3 months.<sup>(1)</sup> The criteria which are taken into consideration by the Controller are the standards of conduct and industry of the offender, thus it often happens

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<sup>(1)</sup> Prison Regulations 1961 Para.53.

that those to whom parole is granted have also qualified for a remission of their sentences.

In sharp contrast to the numerous sentences for summary offences which are fixed by Statute, at the Supreme Court level, there is very little guidance for the Court contained in the Criminal Code 1924. Certain indictable offences are punishable with the death penalty<sup>(1)</sup> but beyond those provisions, judges have to use their discretion in passing sentence by virtue of Section 389 (3) which lays down that:-

"Subject to the provisions of the Code or of any Statute and except where otherwise expressly provided, the punishment for any crime shall be imprisonment for 21 years or by fine or by both such punishments and shall be such as the judge of the Court of trial shall think fit in the circumstances of each particular case."

As in the case of fines, Parliament has thus gone from one extreme to the other; courts of summary jurisdiction are given so little freedom that it is difficult for them to consider cases on an individual basis and the Supreme Court is given virtually no guidance whatever in the exercise of its discretion. Guidance and flexibility are by no means contradictory to one another; both can be achieved by the provision of statutory limits, that is, by fixing maximum and minimum fines or terms

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(1) See post p. 82

of imprisonment, as the case may be. Provisions for parole and remission of sentence make way for further consideration of individual circumstances.

A problem which has given rise to considerable controversy in recent years is that of the short-term sentence. In 1960, some illuminating findings were made at the second United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>(1)</sup> The Congress recognised:

- "(1) In many cases, short term imprisonment may be harmful in that it may expose the offender to contamination and that it allows little or no opportunity for constructive training, and would therefore regard its wide application as undesirable. The Congress recognises however that in some cases the ends of justice may require the imposition of a short sentence of imprisonment.
- (2) In view of this fundamental situation, the Congress realises that the total abolition of short term imprisonment is not feasible in practice and that a realistic solution of this problem can be achieved only by a reduction of the frequency of its use in those cases where it is inappropriate and particularly where the offence is trivial or technical or imprisonment is used in default of payment of a fine without consideration of the offenders means.

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(1) Report of the Secretariat A/Conf. 17/20 at p. 63.

- (3) This gradual reduction must be brought about primarily by the increased use of substitutes for short term imprisonment, such as suspended sentences, probation, fines, extra-manual labour and other measures that do not involve the deprivation of liberty.
- (4) In the cases where short term imprisonment is the only suitable disposition of the offender, sentences should be served in proper institutions with provision for segregation from long term prisoners and treatment should be as constructive and individualised as possible during the period of detention. Where ever practicable, preference should be given to open institutions as places where sentences are served.
- (5) The Congress recommends that :-
  - (a) The Governments of member nations should as soon as practicable ensure the enactment of legislative measures necessary to carry the foregoing recommendations into effect;
  - (b) Scientifically organised research should be undertaken with a view to establishing means whereby it may be determined for what persons and in what circumstances short term imprisonment is unsuited and whereby satisfactory classification, training and rehabilitative programmes may be devised;
  - (c) Suitable programmes should be formulated and put into effect for the instruction and training of correctional personnel concerned with short term imprisonment;
  - (d) Methods should be devised and put into effect whereby:



- (i) Sentencing tribunals may be encouraged to use alternatives to short term imprisonment; and (ii) the general public may be informed and persuaded of the soundness of the views herein expressed."

In accordance with these recommendations, many countries are endeavouring to reduce the frequency of the use of short term sentences by employing substitute penalties which do not involve the deprivation of liberty. Among the arguments for using fines are that they substitute a source of revenue for the State, rather than an expense, they do not impose the stigma connected with imprisonment and they can be adjusted to the offence more easily than other penalties. To remedy the inequities which might occur, in 1931 Sweden introduced "day-fines" based on the offenders daily wage or some other source of income.<sup>(1)</sup> It is submitted that such a system has definite possibilities but care would have to be exercised by the Courts to fix the amount so that it did not completely annihilate the offender's incentive to work. Also, provision for suspension of the payment of instalments would have to be made during periods of sickness or unavoidable unemployment.

The Advisory Council on the Treatment of Offenders in England had already conducted some enquiries of the nature suggested by the United Nations Congress. In 1957, the Council suggested there are two

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<sup>(1)</sup> See United Nations 1963 Report on the World Social Situation at p.117.

distinct categories of offenders for whom short term sentences are undesirable, the first is the prisoner whose offence suggests prima facie prison is unsuitable: the fine defaulter, the chronic alcoholic, the woman convicted of child neglect, the husband who has defaulted on a maintenance order. The second is the prisoner convicted of a criminal offence such as larceny, breaking or assault and given without the option of a fine a sentence of imprisonment which will not train nor deter him but possibly contaminate him.<sup>(1)</sup> The main recommendations made by the Council for alternative methods of treatment were for the extension of the attendance centre scheme for male 17 - 21 year olds and for the imposition of heavier fines.<sup>(2)</sup> It was also urged that adult first offenders should not be sentenced to imprisonment unless the Court is of the opinion that no other method of dealing with him is appropriate.<sup>(3)</sup>

The Advisory Council on the Treatment of Offenders made a further report in 1959 concerning the problem of the youthful offender.<sup>(4)</sup> It was recommended that detention in a detention centre should be the only form of sentence that the courts could impose on youths who they think

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(1) "Alternatives to Short Terms of Imprisonment" Report of the Advisory Council on the Treatment of Offenders 1957 H.M.S.O. London, para 8.

(2) Op. cit. para 61.

(3) Op. cit. para 56.

(4) "The Treatment of Young Offenders" Report of the Advisory Council on the Treatment of Offenders 1959 H.M.S.O. London.

should be detained in custody for a period of 6 months or less.<sup>(1)</sup>

This recommendation has been accepted and eventually detention in a detention centre will entirely replace short term sentences for youths falling within the 17 - 21 year old age group.<sup>(2)</sup>

The American Law Institute's Model Penal Code also implies a mistrust of short term prison sentences, especially for the young adult offender. Section 6.05, which defines a young adult offender as a person convicted of a crime, who at the time of sentencing is 16 but less than 22, provides that such an offender, who is sentenced to a term of imprisonment which may exceed 30 days, shall be committed to the custody of the Division of Young Adult Correction and shall receive, so far as practicable, such special and individualised correctional and rehabilitative treatment as may be appropriate to his needs. Section 6.06 concerns offenders who have been convicted of felonies and provides that the minimum sentence shall be one year, whether the felony is of the first second or third degree.

In spite of the worldwide concern regarding the efficacy of the short-term sentence, it is still used with alarming frequency in Tasmania chiefly owing to the lack of alternative forms of treatment being available. Further consideration is given to the possible introduction of alternative

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(1) Op. cit. para. 26.

(2) See "The War Against Crime in England and Wales 1959 - 1964 "Cmnd 2296 (1964) H.M.S.O. London para. 32.

measures in Part IV.

Indeterminate Sentences.

The Criminal Code contains provision for indeterminate sentences to be imposed in certain circumstances. Broadly, if the offender is apparently over 17 years old, and has been convicted of an indictable offence and has been previously so convicted on at least two occasions, the judge may declare such offender to be an habitual criminal and by order direct that on the expiration of the term of imprisonment then imposed upon him he may be detained during the Governor's pleasure in a reformatory prison.<sup>(1)</sup> There is a similar provision whether or not the offender has been previously convicted of an indictable offence if the judge, having regard to the antecedents, character, associates, age, health or mental condition of the person convicted, the nature of the offence, or any special circumstances of the case, thinks fit.<sup>(2)</sup> On passing sentence under this section, however, the judge may direct the offender to be committed immediately to a reformatory prison without passing a definite sentence on him first. Under each section, the offender is then detained in terms of the Indeterminate Sentences Act 1921. It should be noted in passing that although a reformatory prison is referred to, in fact there is no such institution in Tasmania and offenders sentenced

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<sup>(1)</sup> Criminal Code 1924 S.392

<sup>(2)</sup> Criminal Code 1924 S.393

to indeterminate terms of imprisonment are detained at Risdon Gaol in precisely the same manner as the other prisoners.

With regard to persons convicted of summary offences, the requirements are rather more stringent.

Section 6 of the Indeterminate Sentences Act provides that "where any person apparently of 17 years or upwards -

(a) is convicted by a Court of Petty Sessions consisting of two or more justices or a police magistrate of any offence -

- (i) under Sections 5 - 9<sup>(1)</sup> of the Police Offences Act 1935
- (ii) referred to in Section 95 (A)<sup>(2)</sup> of the Justices Procedure Act 1919; or
- (iii) under Section 37<sup>(3)</sup> of the Traffic Act 1925

and sentenced to a term of imprisonment of not less than 3 months and

(b) has been previously convicted on at least two occasions -

(i) Of any offence or offences (whether of the same description of the offence or not) under any of the said sections, or any corresponding provision previously in force; or

(ii) on information or indictment filed in the Supreme Court of any offence or offences (whether of the same description or not)

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(1) The offences referred to in these sections are vagrancy, consorting, loitering etc., begging, imposition prostitution etc. and swindling etc.

(2) The offences referred to are crimes which are triable summarily - see Justices Act 1959 S.71 (1).

(3) The offence referred to is the unauthorised use of a motor vehicle.

Such Court of Petty Sessions may by order in the prescribed form direct that such person shall, before the completion of such term of imprisonment be brought up at some sitting of the Supreme Court to be named in such order in the place nearest or most convenient (having regard to time) to the place where such court of petty sessions is then held or to the gaol to which such person is committed or to which he may in due course be removed before the judge of the Supreme Court to be dealt with under the provisions of this Act as to indeterminate sentences.

(2) Every such person shall -

- (a) by virtue of such order and without any writ of habeas corpus or writ be brought up before the judge accordingly.
- (b) be deemed to be in the legal custody of the police constable, gaoler or officer having the temporary charge of such person and acting under such order, and such officer shall in due course return such person into the custody from which he was so brought up; and
- (c) be dealt with as provided by the Criminal Code."

It is immaterial whether the previous convictions took place in Tasmania or elsewhere or whether they were before or after the commencement of the Indeterminate Sentences Act 1921<sup>(1)</sup>.

The Act also contains provision for the transfer of prisoners sentenced

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<sup>(1)</sup> Indeterminate Sentences Act 1921 Section 7.

to definite terms to a reformatory upon the exercise of administrative discretion<sup>(1)</sup>. As there is no such reformatory in existence this provision serves no purpose at all. Even if there were a nominal transfer the length of the sentence would be in no way affected as Section 11 provides that no person so transferred to a reformatory shall be detained for a longer period than the unexpired residue of his sentence.

The Act provides for the setting up of an Indeterminate Sentences Board<sup>(2)</sup> consisting of five members of which the Director of Mental Health is ex officio a member and the Chairman. The Board meets every two months and it has the following duties:-

- (a) to make careful inquiry as to whether any persons detained in any reformatory prison are sufficiently reformed to be released on probation or whether there are any good and sufficient reasons for the release on probation of any person so detained
- (b) in making any recommendations as to such release to have regard to the safety of the public of any individual or class of persons and the welfare of the person it is proposed to release; and
- (c) to report to the Governor as to any matters on which the Governor may desire a report with regard to any such release on probation<sup>(3)</sup>.

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(1) Indeterminate Sentences Act 1921 Section 8.

(2) " " " " " 21.

(3) " " " " " 21.

The other powers conferred upon the Board by the Act relate to the transfer of prisoners between the gaol and the reformatory and accordingly are immaterial.

The Act provides that the recommendations of the Board are then considered by the Governor<sup>(1)</sup> who may authorise the release of those prisoners whom he deems sufficiently reformed or where there is some other good reason for release. In the case of a prisoner originally sentenced under the Indeterminate Sentences Act, he is released on licence for a period of two years. Conditions may be attached to a licence<sup>(2)</sup> and in practice, prisoners so released are almost without exception placed under the supervision of a probation officer. The licence may at any time be revoked by the Governor and there is a fixed penalty of three months imprisonment by any person released on licence who fails to produce his licence when required to do so by certain authorised people, or fails to furnish a reasonable excuse for not doing so or contravenes or fails to comply with any condition of the licence<sup>(3)</sup>.

Where a licence has been revoked or where a person released on licence has been convicted of an offence and sentenced to a fixed term of imprisonment, there follows recommitment and further detention under the Act, in the latter case at the expiration of the fixed sentence<sup>(4)</sup>.

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(1) Indeterminate Sentences Act 1921 Section 16 (1)

(2) " " " " " 16 (3)

(3) " " " " " 16 (5)

(4) " " " " " 17



It is appropriate at this point to consider the implications involved in passing sentences under the Indeterminate Sentences Act. The effect of passing such sentences is to give a far greater measure of control to administrative agencies for the sentencer thereby surrenders his power to determine the length of the sentence.

Dr. Norval Morris, in a paper submitted for discussion at the Eighth Legal Convention of the Law Council of Australia <sup>(1)</sup> in 1953 observed:-

"Individualisation of punishment allied with the indeterminate sentence, aiming at a greater protection of the community and the rehabilitation of the criminal, using as is unavoidable, the concepts of social dangerousness and the likelihood of reform, constitutes a system of punishment well suited to the wisest and humane development of our society and the grossest tyranny. If power be removed from the Court and given to an administrative body, there is considerable danger of the abuse of that power. ...In certain areas, it is essential that power be given to administrative agencies. The Children's Court would not be prepared to undertake the task of imposing a fixed sentence on young offenders and this applies also to the younger trainable youths, and to the hopeless hardened criminals. For these criminals, the need for indeterminate and administrative control of their sentence is overwhelming; it is submitted that this is so because in these areas we have sufficient knowledge to undertake this task of either reforming

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(1) "Sentencing Convicted Criminals" A.L.J. Vol. 27 p. 186.

the criminal or more completely protecting the community. We have established techniques of treating young offenders materially and demonstrably more effective than any fixed condign punishments that might be imposed upon them and at the other end of the scale, we have established that it is hopeless to impose on a habitual criminal a fixed sentence commensurate with that crime he last committed".

It seems entirely reasonable that indeterminate sentences should be reserved for these two types of offender, namely the young and trainable on the one hand and the habitual criminal on the other. However, a vital corollary to this recommendation is that we should in fact have facilities for training the trainable and there has been an alarming tendency in recent years in the Courts to sentence offenders under the age of 21 to prison under the Indeterminate Sentences Act. Thus the Act is being used as an ultimate sanction for young criminals who have failed to respond to other penal measures but it is a sad reflection on the community as a whole that offenders should be considered intractable at such an early age.

The situation of the young offender being sentenced under the Indeterminate Sentences Act generally arises in cases where there has been previously committal to a juvenile institution; on discharge, the offender has continued his life of crime and owing to lack of alternative custodial care being available he has then been sentenced to prison. Probably his first term of imprisonment has been a short one but after one or two similar sentences, the judiciary are conscious of the need of a more potent sanction.

Eventually the offender has been committed to the "reformatory" prison in terms of the Act.

The major difficulty seems to spring from the fact that the child offender was sent to a juvenile institution which failed to reform him whereas other methods of treatment might have succeeded, had they been available. As there is now a far greater use of supervision ordered in the Children's Courts, it is unlikely that such a severe problem will arise with regard to future generations. However there is still room for the extension of non-custodial care.<sup>(1)</sup>

Unless institutional care is skilled, the very frequent use of it tends to become like a drug; either the beneficial effects will wear off or else existence which is independent of it will become virtually impossible.

It is submitted that the indeterminate sentence can still play a valuable role in the State's penal programme; however there are two reservations to this penalisation, firstly the use of it must be restricted to trainable youths or habitual criminals and secondly, there must be further reformatory programmes for the youths beyond the training available for ordinary prisoners at the Gaol.

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<sup>(1)</sup> See Part IV

The Death Sentence.

It is not proposed to consider at length whether capital punishment can be justified; for many centuries the matter has been the subject of bitter controversy. Beccaria, in his famous essay on crimes and punishments posed this question: "What manner of right can men attribute to themselves to slaughter their fellow beings?"<sup>(1)</sup> This question has never been satisfactorily answered and it is highly improbable that it ever will be.

Although the Tasmanian Criminal Code 1924 provides that treason<sup>(2)</sup> and murder<sup>(3)</sup> are punishable by death, capital punishment has only been enforced five times in the present century<sup>(4)</sup>. The sentences of those found guilty of capital offences have almost invariably been committed to life imprisonment by virtue of the Royal prerogative. Unfortunately whether or not capital punishment is enforced has become a political issue in Australia, the Labour Party being very reluctant to use the sanction and the other parties deciding the penalty in each individual case. As

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(1) "On Crimes and Punishments" Cesare Beccaria 1784. Translated with an Introduction by Henry Paolucci Bobbs-Merrill Co. Inc.

(2) Criminal Code 1924 S.56.

(3) Criminal Code 1924 S. 58.

(4) Dates of executions in this century: 1913, 1914, 1922, 1932 and 1946. See "Police Matters in Tasmania" Government White Paper 1962 Para. 186.

observed by Mr. S.W. Johnston, the verdicts on murder trials have an undoubted relationship with the political party in power<sup>(1)</sup>. He referred to the situation in Victoria by way of example: in the 31 months a Labour Government was in power, 28.6% of the accused were convicted of murder, 25% were acquitted of murder but found guilty of manslaughter, and 46.4% were acquitted simpliciter or found not guilty on grounds of insanity. In the 42 months the conservative parties were in power, 18.2% were convicted of murder, 43.6% were acquitted of murder but found guilty of manslaughter and 38.2% were acquitted simpliciter or found guilty on the grounds of insanity. This is a highly unsatisfactory situation from a moral viewpoint and has a distorting effect upon criminal statistics.

Section 389 provides for death by hanging unless the offender is under the age of 18 years, in which case, he shall be detained in custody during Her Majesty's pleasure. This implies that persons under that age are too young to be fully responsible for their actions; however the statutory provisions as to criminal responsibility are quite inconsistent with one another<sup>(2)</sup>, and the present distinction appears to be based more upon the gravity of the offence rather than upon the offender's ability to understand what he is doing.

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(1) "Criminal homicide rates in Australia" S.W. Johnston Howard League for Penal Reform (Victoria) 1962 March issue.

(2) See also Criminal Code 1924 S.18, Child Welfare Act 1960 S.3., Police Offences Act 1935 S.3.

A Select Committee of the Tasmanian House of Assembly recommended in 1962: "That matters affecting the death sentence in this State be referred to an appropriate committee for investigation and that in the meantime, the death sentence remain on the Statute book"<sup>(1)</sup>. It is to be hoped that no further time will be lost in implementing this recommendation.

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(1) "Police Matters in Tasmania" 1962 Government White Paper. Report of a Select Committee of the Tasmanian House of Assembly Para. 193.

## PART II

### THE CORRECTIONAL AGENCIES AT WORK

#### INTRODUCTION

The responsibility in the nation's war against crime is shared by many more people than is generally realised. The correctional field extends not only to the recognised agencies which are considered later in this Chapter but also to the Churches, the hospitals and to every organisation which directly or indirectly assists in rehabilitating offenders.

Even the word "offender" cannot be construed in a restricted sense, for there are many crimes which are never detected by the Police. Professor Radzinowicz has drawn our attention to the "dark figure" of crime<sup>(1)</sup>, the fantastic number of criminal offences which are unknown, unreported or undetected. Thus at some time in a normal life span, it is reasonable to suggest most members of the community have contact with those who have transgressed the law. For this reason, efforts should be made to promote more public understanding of the extreme complexity of the problems which arise and the attempts which have been made to deal with those problems.

In view of the size of the correctional field, there is a temptation to admit defeat and to continue merely blundering along in the darkness

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<sup>(1)</sup>The Times 4th June 1964.

of our own ignorance. However, new discoveries are being made and new techniques are developing which may be used and even extended in our own State once we have defined the field and identified the areas in which our particular problems exist.

To gather information concerning every organisation in Tasmania which influences correction and rehabilitation of offenders would be a presumptuous task for one individual. Therefore it has been necessary to concentrate in this Chapter upon those agencies which make correction their primary concern.

Having visited each institution in the State which caters either exclusively or partly for maladjusted and delinquent children and having spent some time with those in charge of the various correctional agencies for adults, two needs of primary importance have become apparent. These needs are to some extent interdependent: the first is the vital requirement of trained staff and the second is the need for some consistency of policy amongst those dealing with offenders.

The modern age might be called the specialist age; great emphasis has been laid, and rightly so, on training in almost every sphere of activity. Unfortunately, the correctional field, although providing a vital service to the community which calls for skilled workers, has been forced to recruit many who are untrained. Various factors contribute to this situation, the most prominent being the non-existence of a University course for Social Workers. There is a course at the Hobart



Technical College for Social Workers and while this course is meeting a very real need, it cannot replace adequately University lectures, rather should the two courses be complementary to one another. The possibility of extending the training available for Social Workers is discussed more fully in Part IV. At the present time all those employed in the correctional field are working under such pressure, it would be difficult for them to attend lectures, also in certain quarters there is prejudice against theoretical knowledge and it is maintained all necessary information can be obtained from experience. This state of affairs is lamentable; it leads to a wastage of financial resources and man power. Personal experience alone provokes controversy and lack of consistency both within the services and between them.

Because of its very nature, the correctional field has always attracted a large number of voluntary workers, both within the institutions and outside. Their services can be of great value and in certain instances, their lack of official status can be an advantage rather than a handicap, as for example, in certain phases of prison after-care. However, the scope of voluntary service should not be over emphasised, the work should be supervised by those having specialised knowledge. It may be desirable, in the interests of the offenders that this supervision is discreet but it should nevertheless exist and the activities of voluntary workers should be subject to constant review.

Having referred briefly to the scope of the correctional field and mentioned generally some of the problems confronting workers, let us

now turn our attention to the agencies having the closest contact with the offenders.

### THE POLICE FORCE

It is somewhat trite to stress the importance of the Police in the correctional field, nevertheless, the profound influence of the Force is not always recognised.

Professor Radzinowicz, in a recent article,<sup>(1)</sup> estimated that only 15% of all offences in England are detected by the police. It is exceedingly difficult to check the accuracy of this claim for we have no means of assessing the "dark figure". However, it is true to say that criminal statistics are at the most, only a rough indication of the prevalence of crime. They inevitably reflect such factors as the efficiency of the Police and the skill and personalities of the individuals appearing in Court. Miscarriages of justice undoubtedly occur from time to time. It has been suggested that crimes known to the Police measure the crime rate better than actual convictions and while this is conceded to be the case, unknown and unreported crimes are still not taken into account. Further, the number of offenders participating in each offence and the number of offences committed by each offender cannot be registered.

Whether or not potential offenders are deterred from crime depends partly upon crime detection, partly upon the certainty of conviction and

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<sup>(1)</sup> The Times, London 4th June 1964

partly upon the adequacy of the sentence imposed. Thus the Police Force has a vital contribution to make in this respect and it is a contribution which will be influenced by the strength of the Force, both in number and in efficiency.

In 1962, a Select Committee of the Tasmanian House of Assembly made a report following a full enquiry into matters relating to the Police Force<sup>(1)</sup>. The terms of reference included investigation as to:-

- "(i) Whether the Police Force in Tasmania has sufficient personnel to give protection to the general public and
- (ii) Whether the employment of the personnel of the Police Force is directed towards duties of an inconsequential nature to the exclusion of the essential duties of the protection of the general public and the prevention of crime".

Many witnesses were examined in the course of the enquiry including members of the Police Departments from Victoria and New South Wales. At that time, the authorised strength of the Force was 570 and it was recommended that it should be increased to 636. The Committee reported:-

"Members are of the opinion that far too many police are engaged in duties which either are not necessarily the responsibility of a Police Department, or for which the services of a trained policeman should not be required. In consequence, there are insufficient then for those

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(1) "Police Matters in Tasmania" Report of the Select Committee of the House of Assembly 1962.

duties which are exclusively the responsibility of a Police Department. There is an urgent need for an increase in the number of the police but only if the whole of that increase is to be directly and actively engaged in the prevention and detection of crime and apprehension of law-breakers."<sup>(1)</sup>

Some of the particular duties, of which the Committee considered the Police should be relieved included the collection of moneys for other departments<sup>(2)</sup> and the distribution and collection of stock and crop returns.<sup>(3)</sup>

At the time of writing,<sup>(4)</sup> the total strength of the Police Force was 621, the authorised strength being 623. Excluding trainees, the Force comprised the following:-

Male Police

Commissioner of Police  
Deputy Commissioner  
5 superintendents  
30 inspectors  
37 first class sergeants  
27 second class sergeants  
23 first class senior constables  
26 second class senior constables  
19 first class constables  
26 second class constables  
333 constables  
55 special constables  
16 junior constables

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(1) Op.cit. para. 27

(2) Op.cit. para. 77(a)

(3) Op.cit. para. 85

(4) 16th October 1964

Female Police

2 sergeants  
6 constables  
2 auxiliaries

The State is divided into four districts: the north, the south, the north-west and the central districts, each of which is controlled by a branch of the Uniformed police. The Criminal Investigation Branch of the Force covers the whole State.

Members of the Uniformed branch are divided into sections which undertake different duties. These are as follows:-

<u>Section</u>	<u>Duties</u>
<u>The Traffic section:</u>	The enforcement of traffic laws and all matters relating to road safety.
<u>Licensing section:</u>	The supervision of licensed premises, the administration of the Licensing Act and the supervision of all public entertainment where liquor is consumed.
<u>Gaming section:</u>	The enforcement of the provisions of the Gaming Act, the supervision of bookmakers, totalisators and side-shows at regattas.
<u>Transport section:</u>	The supervision of all police transport and the use, maintenance purchases and disposals of cars.
<u>Police Training Section:</u>	Comprises one inspector and two sergeants who are educational officers; they are responsible for running the training course for admission to the Force and for the guidance and assistance of members

SectionDuties

undertaking correspondence courses.

Water Police:

Comprises 3 officers in Hobart and one on Flinders Island; they enforce law relating to fishing, supervise small craft, assist investigation of crimes committed on boats and assist in emergency search and rescue operations.

Emergency Search and Rescue Squad:

Comprises one full time sergeant, who is in charge of all equipment, and part-time trained officers from other sections. They are responsible for dealing with any emergency which may arise such as the rescue of persons, the recovery of bodies and stolen goods.

Women's section:

One sergeant is in Hobart and the other is in Launceston. The women police perform usual police duties but specialise in offences committed by females and in the welfare of children, they give assistance at the Courts and visit places where girls and young women are likely to be in moral danger.

Police Boys' and Girls' Clubs:

Comprises three full time officers in different parts of the State. In Hobart, at the time of writing, the Boys' Clubs consisted of 300 members and the Girls' Club of 120 members. The officers in charge of the Clubs organise creative leisure activity and sport.

<u>Section</u>	<u>Duties</u>
<u>Country Police:</u>	The duties undertaken are of a very general nature; these include the prevention of crime, the preliminary investigation of crime, the supervision of traffic, the distribution and collection of stock and crop returns, supervision of places of public entertainment and the protection of wild life. Country police officers also act as Stock Inspectors, tenant inspectors and Crown land bailiffs.

Thus it appears that in spite of the Report of the Select Committee a great deal of the time of country police is occupied by duties of an inconsequential nature which could be undertaken by other members of the community.

The Criminal Investigations Branch of the Tasmanian Police Force is under the charge of a Superintendent. The work of the branch includes crime detection, property tracing, ballistics, photography, finger printing, the management of the missing persons bureau and communications.

Assistance is received from the Government Analyst and the Government Pathologist in relation to forensic matters.

#### The Training for the Police Force

The Police Selection board select suitable trainees according to their references, family background, intelligence quotient and physical

attributes. The course at the Training School lasts for 3 months and includes instruction in general police duties, physical training and deportment, first aid and some general education. On leaving the Training School all trainees must take the Retention examination which consists of papers in the following subjects:-

Practical police duties,  
Police regulations and standing orders,  
Evidence,  
Acts and regulations,  
English,  
Arithmetic,  
Geography, and  
Civics.

The standard of the general subjects is roughly equivalent to the 6th class standard in Tasmanian Schools<sup>(1)</sup>. If the trainees attain the required standard, they are then sworn into the Force as constables, provided they are over 20 years old. Junior constables may enter the Force at the age of 16 years.

After the Retention examination, members of the Force are not obliged to continue studying though they are encouraged to take a correspondence course which is supervised by the Police Training Section.

A few particularly promising members of the Force are selected for

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(1) 6th class standard is attained during the final year of Primary School. It is hoped that the length of the Training School course will be extended in the near future and that the standard of the Retention Examination will be raised.



further training on the Mainland and go either to the Airlie Police College; the Manly Police College or the Detective Training College in Melbourne. The courses which are undertaken vary in length from 2 months to 6 months.

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The responsibility of the Police Force in the correctional processes is a heavy one and it is important that the Force should recruit and provide promotional opportunities for young men, not only of high moral calibre but also practical and scholastic ability. Twentieth century welfare states offer higher education to all who show academic promise; graduate status is becoming increasingly common. Young men, who might in other circumstances make their careers in the Police Force are attracted to other employment by glittering financial prospects and opportunities to use their knowledge in a satisfying way.

The 1962 Select Committee of the House of Assembly were impressed by the advances made in forensic science in Victoria<sup>(1)</sup>. The Police Department there has established its own laboratory, with science graduates on the staff. At that time, the laboratory had taken over almost every activity in relation to forensic science with the exception of toxicology work. The Committee believed that a long-range view should be taken in Tasmania in connection with the development of

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(1) See "Police Matters in Tasmania" paras. 153-156.

forensic science and recommended preliminary discussions should take place with representatives from the University.

Although in recent years, there has been a definite increase in the strength of the Force, and a greater concentration upon matters directly related to crime, the proposals made by the Select Committee still have not been fully implemented.

#### THE DEPARTMENT OF SOCIAL WELFARE

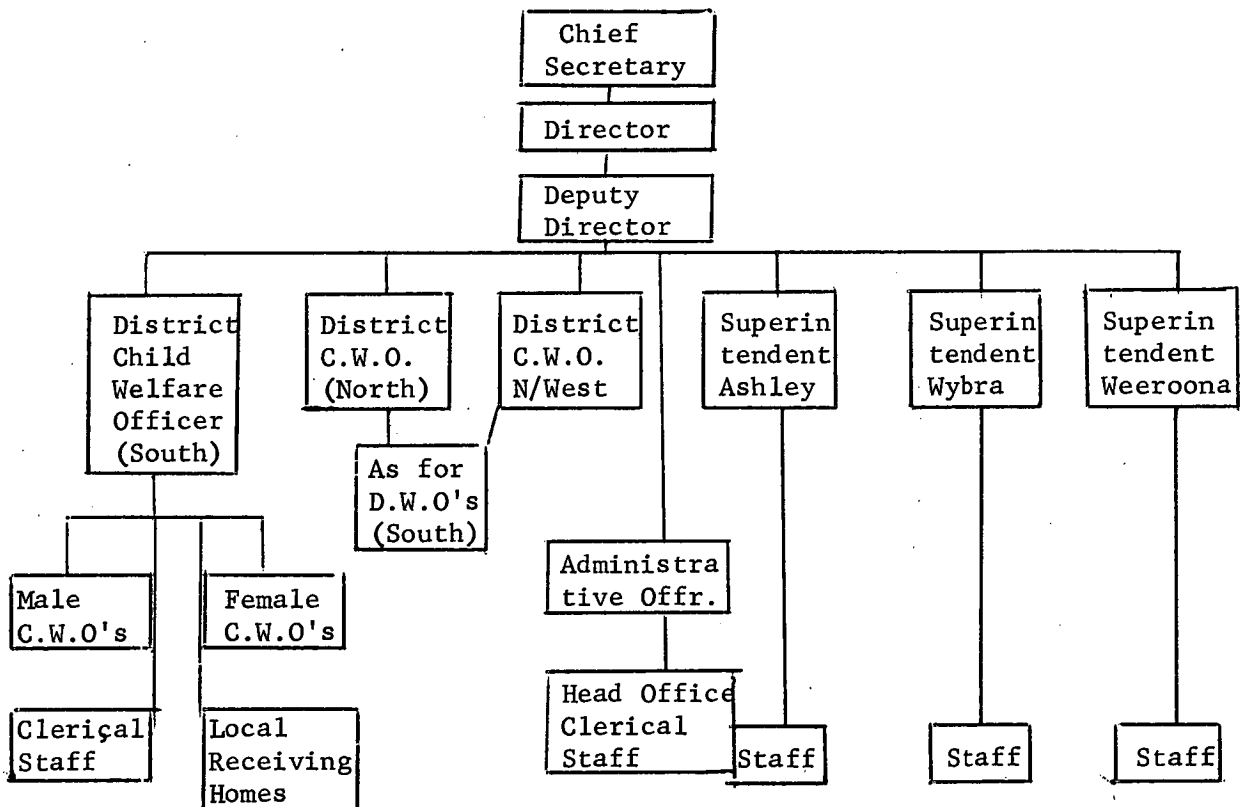
The present Department traces its history from the Charitable Grants Department which was established in 1873. Since that time, there have been numerous changes both in the name of the Department and in the functions which it has fulfilled.

The most recent change followed the enactment of the Child Welfare Act 1960 which provided for an Advisory Council (which is not yet established) to advise the Chief Secretary on matters relating to the welfare of children and special Children's Courts. In 1961, the Department was finally renamed the Department of Social Welfare.

There are two main streams of social welfare activity which are undertaken by the Department, the Child Welfare Division and the Relief Division. The Child Welfare Division has many functions; these include investigating complaints regarding children who are neglected or inadequately controlled, the preparation of cases for Children's Court

hearings, the supervision of children in respect of whom the Court has issued supervision orders, the placement and supervision of children declared to be wards of the State and the control of the various State Institutions for children which includes five Receiving Homes as well as Ashley Boys Home, Wybra Hall and Weeroona.

In addition to administrative and clerical staff, the Department employs Field Officers and staff for each of the State Institutions as shown in the diagram below which indicates the hierarchy within the Child Welfare Division:-



At the date of writing, there were, besides the District Welfare Officers in Hobart, Launceston and Burnie, four male and four female child welfare officers in Hobart, two male and two female child welfare officers in Launceston and one male and two female child welfare officers in Burnie.

The work of the child welfare officers to a very large extent resembles the work carried out by the Adult Probation Officers, insofar as the duties of each involve the preparation of background reports for the use of the Courts and the supervision of those offenders committed to their care. Of necessity, however the work of the child welfare officers requires a great deal of travelling, home visiting and interviews with parents and school teachers.

The work of the child welfare officers has many facets; many of their activities ostensibly have little connection with delinquency such as the arrangement of adoptions and investigations concerning neglected children. However, children who are deprived of normal family relationships, either through the absence of their parents or unsatisfactory conditions within the home are particularly likely to have a predisposition towards delinquency. In many cases, therefore the work has a preventative element.

In the course of the empirical study, described in Part III, it was observed that truancy is frequently a fore-runner of delinquency. Although the welfare officers in Tasmania do handle some persistent cases

of truancy, most of this work is undertaken by Truant officers who are employed by the Education Department. In New South Wales, it has been found more convenient that all truancy cases should be investigated by the Child Welfare office and it is submitted that this is more satisfactory than the Tasmanian system.

In addition to its other functions, the Department of Social Welfare is responsible for running five Receiving Homes and three Government Institutions for Wards of State, Wybra Hall for Boys, Ashley Boys' Home and Weeroona Training School for Girls.<sup>(1)</sup> The staff employed in each of these institutions are appointed by the Department. It is the Department's general policy that within the Child Welfare division, officers should have experience both in institutional work and in field work therefore there is a certain amount of interchange between the two types of service.

Unfortunately not all wards of state can be accommodated in satisfactory foster homes or in Government institutions, therefore many neglected children and children who have records of minor offences are placed in privately run institutions. Some of these institutions are only prepared to take a limited proportion of delinquent children for it is the opinion of the superintendents that a small number can be readily

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<sup>(1)</sup> Detailed reports of these Institutions appear in Appendix A.

absorbed into a group of "normal" children whereas a larger number of delinquents are likely to contaminate the atmosphere altogether.

However, in practice, the distinction between children who have Court records and those who have not is often artificial<sup>(1)</sup>.

The privately run institutions which will cater for some delinquent children are as follows:-

Barrington Home for boys	(Salvation Army)
Kennerley Home for boys	(Private board)
Bethany Home for boys	(Church of Christ)
Magdalen Home for girls	(Roman Catholic)
Maylands Home for girls	(Salvation Army) <sup>(2)</sup>

Magdalen Home is in a category on its own insofar as it is run by Roman Catholic Sisters of the Order of the Good Shepherd. This Order was especially instituted for the care of delinquent girls, therefore there is no limit upon the number of girls with Court records that the Home will take. In actual fact, many inmates of the Home have been placed there upon private application rather than as a result of Court orders.

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(1) Section 20 of the Child Welfare Act 1960 provides that if a Childrens' Court finds a child guilty of an offence, it shall not, unless it imposes a sentence of imprisonment on the child, or having regard to the nature of the offence and to the age and character of the child it considers it desirable to do so, cause a conviction to be entered against the child but may nevertheless deal with him as it could have done if it had convicted him of the offence.

(2) Detailed reports of these Institutions appear in Appendix A.

It is the policy of the Department of Social Welfare, so far as possible, to place children in foster homes rather than in institutions and this policy has been extended to those who have been guilty of minor offences as well as to neglected children. If the child's record is serious or there is some manifestation of marked abnormality, institutional care is inevitable but generally it is utilised only as a last resort.

Provided the foster homes are carefully selected, juvenile offenders are afforded a much greater opportunity to reform within the family unit than they are in an Institution.

Without exception, the sincerity of those in charge of the Institutions was the most striking feature of the people interviewed. They were most co-operative in this project and in many cases, gave unlimited time to discussion. However, it will be apparent from the detailed reports<sup>(1)</sup> that there were among the Superintendents, diametrically opposed points of view concerning the correct method of treating maladjusted and delinquent children. In one case at least, the children are given very strict supervision, every moment of the day is organised in some form of activity whether it is work or leisure, discipline is given primary emphasis, tremendously high standards of courtesy, hygiene and personal orderliness are required; all these standards are in marked contrast to the homes from which the children come. On the other hand,

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<sup>(1)</sup> See Appendix A.

in a Home ostensibly for older and more sophisticated delinquents, the attitudes of some staff members are dominated by psychological principles, possibly not fully and correctly understood, great importance is attached to the need of "loving" the boys back to health and of bringing out their better natures which in many cases seem to have been dormant for a considerable number of years. The treatment of delinquents by the use of psychoanalytical techniques is claimed to be the most effective method, but those who advocate its use constantly emphasise the danger of unskilled workers attempting to use therapy<sup>(1)</sup>.

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(1) Dr. Robert W. Shields in his book "A Cure of Delinquents" 1962, Heinemann (p.91) writes of the experiment in the treatment of maladjusted and delinquent boys at Bredinghurst School, Peckham, London. He observes "One great danger in a school of this kind is the tendency to confuse the roles of the various adult workers. It is not expected for example that teachers should attempt to carry out therapy. The teacher or house-parents who will sit an anxious or depressed child on his lap and ask him with a supposedly professional air to "tell me all your worries" may earnestly wish to help the boy. It is however, nothing more than a particularly unfortunate attempt to usurp the role of the therapist since the teacher does not have the skill to take advantage of a mechanically contrived situation such as this, even supposing it were a positive method of establishing a meaningful communication between a child and an adult. Actions of this kind on the part of the educational or child-care staff point to an unconscious envy of the therapists role and perhaps a lack of faith in the dynamic of education. Moreover there is a very real danger of the stimulation of sexual fantasies which may easily result in damaging accusations against the teacher and have grave consequences for the school itself. Unless each member of the staff can know with some clarity and observe with circumspection the spheres in which his personality bears upon the child and so keep himself and his function distinct from that of other adult workers, the child will be subjected to great anxiety and clinical work handicapped."

See also "Youthful Offenders at Highfields" H. Ashley Weeks. The University of Michigan Press. 1963.



Whether or not the lofty claims of the psychoanalysts are justified remains to be seen but at least the warning which they give is reasonable. Psychiatrists as a whole undoubtedly have a very real contribution to make in the field of delinquency but in the hands of the unskilled, a little knowledge can be extremely dangerous if it is sought to use it clinically. In Tasmania, psychiatric care is not equally available to all institutions simply by virtue of their geographical situation. For this reason, it is highly desirable that psychiatric clinics should be attached to the Children's Courts and those likely to need treatment could be placed in Metropolitan Homes<sup>(1)</sup>.

Unfortunately the divergence of opinion as to the correct treatment varies not only between the institutions but also in them. This is inevitable to a certain extent owing to human nature itself, but it would be reduced if it were possible to employ trained staff. The present diversity of attitudes must bewilder children for it cannot remain hidden from them. Frequently they learn to exploit the characteristics of different staff members to their own advantage. The wide variety of religious affiliations of the non-State institutions can hardly promote stability in the children who are transferred from one Home to another.

The need to place children in the non-State Homes can have unfortunate

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(1) See post Part IV p. 222

results in many respects; one of the particular disadvantages of the system is the lack of control which the Social Welfare Department has in respect of these Homes. In most cases, the Superintendents are responsible to Committees or Boards in matters of policy and economy. Staff appointments also are generally made by the Boards and unfortunate clashes occur from time to time which must have a deleterious effect upon the children.

In practice, boys who have been charged with less serious offences are sent to non-State institutions and if they have longer histories of delinquent conduct, they are sent either to Wybra Hall or Ashley Boys' Home depending primarily upon their age. Most maladjusted and delinquent girls have recently been placed in the Magdalen Home owing to the difficulties in finding suitable staff for Weeroona.

A high proportion of the criminals described in Part III had previously spent some period in an institution for juveniles. This is not a reflection on the present staff of those Homes or on the methods of treatment used by them. It does indicate however that methods used previously were inadequate and probably that children were committed to institutions when non-custodial care might have been more appropriate.

To summarize, the chief obstacle hindering progress in the correctional field is particularly apparent in the institutions. The lack of consistency in policy is the result of insufficiently trained personnel and too little contact between those in charge of the Homes. The present

policy of the Welfare Department to keep children out of institutions unless there is no suitable alternative for them seems highly desirable, though constant supervision is required to make sure foster home placements are satisfactory. If foster-home placements continue and non-custodial care is extended, the time may well come when privately run institutions are no longer required for the care of delinquent boys. This would have the great advantage of facilitating the supervision of delinquents by the Department.

With regard to girls, the situation is somewhat different. The Magdalen Home is in Hobart, it is self-governing and there is a good relationship between the Sisters and governmental authorities. The work carried out by the Order of the Good Shepherd is especially designed for delinquents and it would be presumptuous to suggest that exclusively State care is preferable to the present arrangement. There is need, however, for another institution for girls, and provided suitable staff can be found, Weeroona can fill this need. It is frequently necessary to split up undesirable friendships amongst children and this can only be achieved if there is an alternative institution. Occasionally there is strong antipathy on the part of a child or parents to the particular religious affiliation of a non-State Home and for this reason the present difficulties could not be altogether solved by the Order of the Good Shepherd also controlling Weeroona.

There is also great need for the extension of non-institutional care and it is thought that controlled use of leisure hours might be introduced

in Metropolitan areas by means of attendance centres organised on similar lines to those in England. Further consideration is given to this topic in Part IV.

#### THE ADULT PROBATION AND PAROLE SERVICE

In Tasmania, the Adult Probation and Parole Service has been established since 1946. The Service was expanded quickly and has become an increasingly valuable instrument in the hands of the Courts for the treatment of offenders.

The Service is under the direct control of the Attorney-General and at the time of writing<sup>(1)</sup>, in addition to clerical staff, comprised 8 male officers and 2 female officers in Hobart, 2 male officers in Launceston and 1 male officer in Burnie.

The present duties performed by the officers include the preparation of pre-sentence reports, the supervision of those placed upon probation and on parole and the supervision of those discharged on licence under the terms of the Indeterminate Sentences Act 1921. Each officer is responsible for the supervision of some probationers and may be called upon to supervise parolees and licensees also. The responsibility of compiling pre-sentence reports is divided between all the officers.

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<sup>(1)</sup> November, 1964.

The duties performed by Probation Officers will now be considered in turn.

1. The Preparation of Pre-Sentence Reports.

(a) Their content and use.

"the cardinal principle", according to the English Streatfield Committee, "is that a sentence should be based upon comprehensive and reliable information which is relevant to the objectives in the Court's mind and that the Court should not be provided with information which is irrelevant or duplicates of other information. Moreover, as research develops and throws further light on the relevance of particular items of information, the results should be borne in mind by the Courts and those who provide reports when they sift available information before forming their opinion"<sup>(1)</sup>

The primary purpose, then, of pre-sentence reports is to assist the Courts in the sentencing process but they may also serve as guides to subsequent work whether the probation system is actually used or not.

The compilation of a report involves a thorough investigation of the offender's family background, education, mental and physical health, employment both past and present, financial resources and commitments,

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(1) Report of the Interdepartmental Committee on the Business of the Criminal Courts H.M.S.O. London 1961 (Cmnd 1289) para. 259.

housing, marital relationships, interests and associations. It also involves enquiries into the circumstances connected with the offence and the prior record of the accused.

In practice, a format is used which is supplemented by a written report of the Probation Officer together with any relevant psychological or psychiatric reports which may have been made concerning the offender.

Generally the Probation Officer also makes a recommendation as to whether, in his opinion, the offender is likely to respond to a period on probation favourably. There was some controversy concerning such recommendations but the practice was finally approved by the Chief Justice in Lahey v Sanderson 1959 Tas. S.R. p. 17 at p.23. The Streatfield Committee in England took the matter a step further when they made the following observations:-

"At some Courts, Probation Officers have accordingly come to deal in their reports, particularly those on young offenders, with the likely effect of other forms of sentence as well as probation and we agree that where the Probation Officer can express a reliable opinion about these other forms of sentence, it will often help the Court. Even if the Probation Officer is of the opinion that probation stands a good chance of benefiting the offender, the Court cannot overlook the possibility that some other sentence might be equally or more beneficial. But this does not mean that in nearly every case the Probation Officer will be able to give a reliable opinion on the likely effect of a number of different

forms of sentence. He should always take care to confine himself to opinions founded on actual and substantial experience (whether his or that of his colleagues) of the effects of the sentence, and should have regard to the results of general research into what sentences achieve as soon as they become available."<sup>(1)</sup>

It is submitted that the policy recommended by the Streatfield Committee extends beyond the scope of the Probation Officer's duties and is open to considerable abuse. It is surely the responsibility of the sentencer to acquaint himself with the results of general research concerning the effects of different types of sentences and Probation Officers should only make recommendations as to whether or not probation is likely to be an adequate sanction.

There is no statutory provision which governs when pre-sentence reports shall be required and accordingly the matter is left to the discretion of the sentencer. In such circumstances, it is inevitable that some sentencers make more frequent use of the service than others but there is a general tendency to increase the practice. This is encouraging, for it indicates a healthy acknowledgement that a balanced assessment of a personality cannot be made from the offender's court appearance alone.

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<sup>(1)</sup> Report of the Interdepartmental Committee on the Business of the Criminal Courts. Op.cit. paras. 341 and 342.

There are some instances when pre-sentence reports are of particular importance and it is submitted that Courts should not proceed to sentence without a Probation Officers report when considering sentencing an offender to prison for the first time. The first gaol sentence is likely to make a profound psychological impact upon an offender, either as a powerful deterrent or by causing him to lose his self respect to such an extent that he has no desire for rehabilitation.

It is also advisable to obtain pre-sentence reports on first offenders, particularly if they have reached an age of maturity before coming into conflict with the law. Youthful offenders also merit special care before decisions are reached as to appropriate sentences.

With the increased use of pre-sentence reports, there is an inevitable increase of pressure upon the Probation staff and the time may come when it is necessary to prepare certain reports between the committal and trial proceedings of offenders appearing before the Supreme Court. Approximately two-thirds of the pre-sentence reports in New South Wales are prepared in this way, having first obtained the consent of the person charged. It has been found that many of those accused of offences are quite co-operative with this practice, once they have been assured that their cases will be in no way prejudiced.

The Streatfield Committee also considered the desirability of pre-trial enquiries and recommended: "that where practicable a probation officer should prepare a pre-trial report on every defendant who has not



been previously convicted of an offence punishable with imprisonment or is not over 30 years old" They also recommended "that a report should be available on any other defendant who had recently been in touch with the probation service, e.g. on probation or for after-care."<sup>(1)</sup>

The adoption of a similar practice in Tasmania may serve to relieve probation officers of undue strain and offer an opportunity of a more thorough investigation.

(b) The disclosure of information contained in pre-sentence reports.

In the recent cases of Van der Linden v Rex and Hunter v Rex (1964) Tas. (unreported), the question of the disclosure of material contained in pre-sentence reports was considered by Crawford J. In both cases, a Probation Officer saw the Magistrate in his Chambers in the absence of the prisoners, and disclosed certain material relevant to sentence. In Court afterwards, the Magistrate repeated most but not all of what was said to him in Chambers. Crawford J. held that whatever is said which is relevant to sentence, whether on oath or otherwise, is evidence and all evidence should be given in open Court in the presence of the defendant. The presiding Judge maintained that even if all of the material disclosed in Chambers had been subsequently repeated, the procedure would still have been improper.

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(1) Report of Interdepartmental Committee on the Business of the Criminal Courts Op.cit. paras. 358 and 359.

The reasoning of the judgment was based upon Section 386 of the Criminal Code 1924 which provides:-

"7. The judge may before passing sentence receive such evidence or statements as he thinks fit in order to inform himself as to the proper sentence to be passed.

8. Such evidence as aforesaid shall, unless admitted by the accused person, be given in the same manner as evidence upon a trial and such statements as aforesaid, if challenged or contradicted by the accused person shall be substantiated by proper proof or shall be ignored."

The Criminal Code was, of course, enacted before the Probation Service was established in Tasmania; formerly reports were supplied by the police. The Legislators of the Code could hardly have anticipated the nature of pre-sentence reports which are now made.

While it is desirable that offenders should have the opportunity of refuting allegations made concerning them, whether made in establishing guilt or in connection with the sentence, there are very real difficulties in connection with this practice.

In the first place, it is commonly found that pre-sentence enquiries are prejudiced if those who are interviewed realise there is a likelihood of being brought into Court and cross-examined; secondly, certain facts might be revealed to the offender which would have a disturbing effect on him, such as circumstances surrounding his birth or his mental health.

The same problem arises with perhaps even greater cogency at the Children's Court level. Frequently children are ignorant of undesirable facts concerning their families although these matters are very relevant to their sentences. The Ingelby Committee in England considered the problem in their recent report and concluded:-

"The difficulties can be met, in the long run only by skilled summarising of reports by the Chairman, as permitted under the existing Rules which were carefully drafted with these difficulties in mind. It is impossible to secure by legislation that only the best practices obtain in all Courts and we feel that improvement in the present practices can be better achieved by administrative guidance coupled with more training for magistrates than by formal regulation.....to facilitate their work and to minimise the difficulties of dealing with "background" etc. reports, the Courts might encourage reporting agents to submit such confidential matter, where necessary, in a separate section appropriately marked and state their reasons why they consider that any particular items of information should not be disclosed or should only be disclosed with circumspection."(1)

In New South Wales, a similar practice has developed in Adult Courts, particularly with regard to information relating to the mental health of

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(1) Report of the Committee on Children and Young Persons H.M.S.O. London 1960 (Cmnd 1191) para. 217.

the family or his immediate family. Where any factors exist which are likely to have a disturbing effect upon the offender, a supplementary report is sent to the Judge through Chambers.

Problems relating to the disclosure of pre-sentence report material have been the subject of controversy all over the world. In Israël, there has been a provision:-

"19. (a) Where a person has been convicted, the Court may, before imposing a penalty, demand a written report by a probation officer on all of the following:-

- (1) The past history of the accused.
- (2) Particulars of the family of the accused, with details, as complete as possible, regarding his parents, spouse, children, brothers and sisters;
- (3) The economic situation of the accused.
- (4) The state of health of the accused and of the members of his family;
- (5) Special personal circumstances, if any, which drove him to the crime;

(b) The Court shall not impose a penalty of imprisonment other than conditional imprisonment except after receiving a report as aforesaid.

(c) In a report as aforesaid, the probation officer may recommend to the Court, the type of penalty, which in his opinion offers prospects of reforming the prisoner.

(d) The Court may direct that the report submitted to it be served

upon the parties and may hear any submission by them in respect of its contents, but the Court shall not be bound to do so."<sup>(1)</sup>

The Israeli provision thus confers upon the Court the power to reveal to the accused person the contents of the report if it sees fit to do so. It seems probable that a court having such a discretion would tend to reveal matters which were damaging to the character of the accused so that he could have the opportunity of refuting the allegations. On the other hand, there seems little object in a Court, upon whom such a discretion is conferred, revealing matters which are mitigating rather than damaging but might nevertheless have a disturbing effect upon the offender.

It is submitted that the problem as to the disclosure of pre-sentence report material should be resolved by legislative provision similar to the Israeli provision and that in practice it is unlikely that the discretion given thereby to the Courts would be abused.

## 2. The supervision of probationers.

The American Correctional Association, in its Manual, describes the duties of a Probation Officer as follows:-

"Throughout supervision, the Probation Officer should be aware that

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<sup>(1)</sup> Israeli Penal Law Revision (Modes of Punishment) Law 5714-1954 S.19.

his role is that of supporter, guide and counsellor. His purpose is to assist the probationer to realise his own best potential, to constantly re-examine with him the reasons for his tendency toward deviant behaviour; to enable him to face his problems realistically, to help him to develop a sense of his own worth; to help him to realise that the world is not against him but that he has certain responsibilities as a member of society, to help him achieve independence, self-respect and self-confidence."<sup>(1)</sup>

Thus the role of the Probation Officer is an extremely exacting one; he needs a deep understanding of those committed to his charge, he must know when to administer discipline and when to be sympathetic, his working hours are irregular and frequently he is called upon to travel considerable distances at very little notice. The counselling is not restricted to the probationer himself, often interviews are required with families, friends and associates. A close liaison has to be maintained with the Courts and with others working in the Correctional field.

As Tasmania is a small State and industrial opportunities are restricted, perhaps the most difficult aspect of the work here is the constant need of probationers to find employment. News travels fast in a small community and if an offender proves unsatisfactory in his work,

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(1) Manual of Correctional Standards 1954. American Correctional Association at p. 522.

his chances of finding another position within the same area are poor. Probationers are not discouraged from leaving the State if there are better opportunities for them elsewhere but in such circumstances, an endeavour is made to maintain regular contact by correspondence.

As the Probation Services in the other States have developed rather unevenly and there is little supervision available for those in country areas, there is no recognised provision for the care of those moving interstate. As the Services expand and develop in the future, it is hoped that transfer of probationers between the States will be possible.

Compared with other jurisdictions, the Tasmanian Probation Officers are handling reasonable case loads. Male officers generally carry case loads between 50 and 80 and female officers do not usually carry more than 50. However, it is difficult to assess working conditions merely by a consideration of numbers requiring supervision. Some probationers demand far more concentrated work than others and sometimes travelling occupies an excessive amount of time.

Nevertheless, it is of some interest to refer to the recommendation of the American Correctional Association:-

"Casework standards should not be hampered by unrealistic case loads. There should be a healthy balance between investigation and supervision assignments. A probation officer should carry no more than a 50 unit case load."<sup>(1)</sup>

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<sup>(1)</sup> Manual of Correctional Standards 1954 American Correctional Association.

This is computed on a rating of one work unit for each Probationer supervised by the Officer and 5 work units for each pre-sentence investigation completed and written by him in a given month.

In fact, very few Probation Officers anywhere in the world carry such a limited case load when pre-sentence investigations are also taken into account. In New South Wales Probation Officers only have 50 probationers committed to their charge, but in Victoria, the average case load is 33 parolees and 180 probationers per officer.<sup>(1)</sup>

### 3. The supervision of parolees and licencees.

Although parolees are distinguished in Tasmania from those released from prison, under the Indeterminate Sentences Act 1921, both types of offender are placed under the supervision of Probation Officers.

Compared with the number released by the Courts on probation, there are relatively few parolees and licencees and the periods for which their conduct is supervised are generally less than probationary periods.

Thus this part of the work forms a relatively small part of the duties of Probation Officers. It is mentioned elsewhere<sup>(2)</sup> that an extension of the Parole System is highly desirable in view of the vast

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(1) Report of the Victorian Adult Parole Board 1963 at p.12.

(2) See post. p. 197



majority of prisoners who receive little or no supervision once they have returned to the communities from which they came. It was probably in recognition of this situation that the new provision of the Probation of Offenders Act 1934<sup>(1)</sup> enables courts to order a period of "probation" at the expiration of gaol sentences, though this term appears to be something of a misnomer.

There are two diametrically opposed points of view concerning the desirability of probation and parole being undertaken by the same officers. On the one hand, it is argued from an administrative aspect, it is easier to have the two services under the same control, that the techniques are similar anyway and that the continuation of supervision of a probationer who is subsequently committed to prison and released on parole, by one and the same officer, can have a stabilising effect upon him.<sup>(2)</sup>

Those who contend that the services should be separated deny that the techniques or the individuals are similar. Dr. Howard Jones considers supervision after a period of imprisonment is part of the total process of institutional treatment and should be undertaken by persons having an intimate knowledge of that experience rather than by Probation Officers.<sup>(3)</sup>

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(1) Probation of Offenders Act 1934 S. 2 (B).

(2) See also "Penal Reform" Max Grimhut 1946 Oxford University Press at pp. 327-329.

(3) British Journal of Criminology April 1964 at p. 354.

Dorothy D. Gage, an American Fulbright Scholar who made a study of the New South Wales' Probation and Parole Services in 1961 observes:-

"The parolee becomes psychologically different from the probationer. He has been removed from society, his family, his job, his freedom. He relives this previous period in his imagination while in prison. As time goes on, he idealises that past life and the people in it from his past knowledge and recollection. In actuality, he is changing and the world and people in it of importance to him are changing too. The longer he remains in prison, the greater the disparity between his day-dreams and actuality."<sup>(1)</sup>

The writer compares this with the attitude of the probationer who remains in the community and concludes there is a distinction between the techniques to be used by probation and parole officers.

It has also been observed that probationers differ greatly in their needs, from parolees.

Material assistance is obviously of greater importance to those released from prison and to their families than it is to those who remain in the community and probably work throughout supervision.

Another essential difference is the desire which is frequently

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(1) The Probation and Parole Services of New South Wales - their growth and development 1961 p. 9.

observed amongst probationers for their cases to be treated confidentially without approach being made to other welfare agencies. This is not only understandable but constitutes a factor which must be respected if the probation relationship is to develop to its fullest potential. Those released from prison do not generally share this desire to the same extent except possibly with regard to employment.

The counselling needs of the families of probationers and parolees are likely to differ. It is far easier to forgive and accept an offender who has not been sentenced to prison and acquired the social stigma attached to such sanction.

On the whole, the advantages of separating the services outweigh the disadvantages, particularly if the Parole System could be run by the Prisons Department or in close association with it.

The Parole staff could possibly have its headquarters at Risdon Gaol and this would permit regular contact not only with the prisoners but also with the prison officers. Greater attention could be focused upon therapy within the prison and especially upon pre-release programmes. (1)

With the adequate functioning of the Civilian Rehabilitation Committee, under the supervision of the parole staff, imprisonment and release could form part of a continuous process. Supervision would also

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(1) See post p. 226

be more readily available for a greater number of discharged prisoners.

The probation and parole systems have been separated successfully in New South Wales and it has been found that each has had a better opportunity to develop skilled techniques of treatment.<sup>(1)</sup> The Parole staff devote a major part of their time and attention to the treatment of prisoners while they are in Gaol. In addition, the parole officers supervise the activities of the Civilian Rehabilitation Committees which are considered in more detail at a later stage.<sup>(2)</sup>

If separation of the Services takes place, it will be necessary, of course, to maintain a close liaison between them and with the various other authorities in the penal field. Pre-sentence reports and records of the Adult Probation Service should be made freely available to parole officers to help them in planning rehabilitation programmes.

## THE PRISONS

### Introduction

Tasmania has always had strong associations with penal history by virtue of the dramatic role it played in connection with the transportation

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(1) Australian Journal of Social Work Dec. 1959 "A General Outline of Adult Probation and its Practice in New South Wales" D.C. Swansen.

(2) See post p. 131

of criminals from the United Kingdom during the last century. Convict labour has played a substantial part in the development of the State and today the Model Prison at Port Arthur, where thousands of recalcitrant offenders were detained in maximum security, is one of Tasmania's foremost tourist attractions.

The fruits of penal reform are now quite evident in Tasmania. As the population of the State is relatively small, there are only three Prisons, apart from the Police lock-ups attached to various Police Stations all over Tasmania. These Prisons are all under the administration of the Controller of Prisons, who is also the Governor of Risdon Gaol. The vast majority of all prisoners are detained at Risdon at least for a portion of their sentences. Some, who are considered to need minimum security only, are transferred to the Prison Farm at Hayes, though there is a continuous interchange of prisoners between Risdon and Hayes.

The male division of the Risdon Gaol was completed in 1960 and prisoners were transferred there from the old Prison in Campbell Street, Hobart. The female division, costing approximately £119,000 was completed in June 1963 and has been occupied since that time. The Prison is of the most modern design, there are single cells for all prisoners. The male division is divided into yards and prisoners are classified soon after admission for accommodation in one of the yards depending upon age and whether maximum, medium or minimum security is required.

The two divisions are entirely separate from one another, the former practice having been to confine female prisoners in a small annexe of the male prison. The full capacity of Risdon is 324 in the Male division and 23 in the Female division.

Hayes Prison Farm accommodates up to 50 prisoners and it is generally filled almost to capacity. The prisoners there engage in very active farmwork and have assisted in making extensive improvements to the property during the last few years. Prisoners are classified at Risdon and a few are sent immediately to the Farm where they may serve the whole of their sentences if suitable for the work. Also, situated within the grounds of the Prison Farm is a Charitable Institution to which vagrants and alcoholics may be sentenced to serve terms of imprisonment by the Courts. Prisoners detained in the Institution assist on the Farm if they are medically fit to do so.

The only Prison in Northern Tasmania is the Launceston Gaol which is reserved generally for offenders serving very short terms, such as 7 days, or for offenders awaiting trial. The full capacity for male prisoners is 10 and for female prisoners is 2.

Detailed reports concerning the administration of the Prisons and the treatment of the prisoners are contained in Appendix A.

### The Prison Population

The offences for which prisoners are sentenced to Gaol tend to follow a similar pattern each year. In the 1963 and 1964 Annual Reports of the Controller of Prisons, it is revealed that the offences for which the greatest number of male prisoners were committed to Gaol were stealing, breaking and entering, unlawfully using motor vehicles, false pretences, vagrancy and assault. During the year ended 30th June 1964 there was a marked increase of prisoners convicted for indecent assault, robbery with violence and assaults on Police Officers.

In Lahey v Sanderson 1959 Tas. S.R. p.17 at p.21, Burbury C.J. made some illuminating remarks in his judgment:-

"It is because the public interest is best served if an offender is induced to turn from criminal ways to an honest living that a Court rarely send a youth to gaol except in cases of considerable gravity (such as a crime involving violence), or in the case of a persistent offender who has shown himself not amenable to disciplinary methods short of gaol. The Courts have recognised that imprisonment is likely to expose a youth to corrupting influences and confirm him in his criminal ways, thus defeating the very purpose of the punishment imposed. There has accordingly been a universal acceptance by the Courts in England, Australia and elsewhere of the view that in the case of a youthful offender, his reformation is always an important consideration and, in the ordinary run of crime, the dominant consideration in determining the appropriate

punishment. It has been said by Lord Goddard, the former Lord Chief Justice of England, that a judge or magistrate who sends a young man to prison for the first time takes upon himself a grave responsibility. With that I respectfully agree..... The problem of dealing with young offenders in Tasmania is accentuated because there are no Borstal institutions or juvenile institutions for training and rehabilitating young offenders between the ages of 16 and 21 years. The Courts in Tasmania are therefore faced with imposing a term of imprisonment as the only alternative to probation. But the fact that no intermediate disciplinary institution is available in Tasmania does not in most cases afford any sound reason why a youthful offender should be sent to gaol in the kind of case where he clearly would not be sent to gaol where such institutions exist. If it appears from the pre-sentence report of the probation officer that there is a real possibility of the youth responding to disciplinary supervision under probation the Court would in the ordinary run of crime act upon such recommendation. If he responds to probation the public interest will be much better served than if he is sent to gaol and becomes a confirmed criminal. The results of probation in Tasmania are sufficiently encouraging to justify the Court placing considerable reliance on it as an alternative to imprisonment."

In spite of the policy outlined in this judgment, there has been an alarming rise in the percentage of youthful offenders among the prison population. For the years ended 30th June 1963 and 30th June 1964, 28% of all male prisoners were under the age of 20 and in respect of these



2 years, 50% and 55% respectively were under the age of 25 years.

This situation may be due in part to what has been described as the "war-time bulge", that is the fact that children who were born during war years are apparently more predisposed to delinquency than others by virtue of the deprivations which they suffered.<sup>(1)</sup> However, the statistics also indicate that the Courts generally are showing very little reluctance to use the sanction of imprisonment. The following table is an extract from the 1964 Annual Report of the Controller of Prisons and shows the age distribution of all prisoners received into gaols within the State from 1st July 1963 to 30th June 1964

	<u>Under 16</u>	<u>16-17</u>	<u>18-19</u>	<u>20-24</u>	<u>25-29</u>	<u>30-39</u>	<u>40-49</u>	<u>50-59</u>	<u>60 &amp; over</u>	<u>Total</u>
<u>FEMALES</u>										
Hobart	-	1	12	13	10	10	4	2	-	52
Launceston	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>10*</u>
	1	2	13	14	11	13	4	3	1	62
<u>MALES</u>										
Hobart	1	80	157	250	133	132	107	29	15	904
Launceston	<u>8</u>	<u>25</u>	<u>32</u>	<u>38</u>	<u>20</u>	<u>16</u>	<u>23</u>	<u>1</u>	<u>4</u>	<u>167*</u>
	9	105	189	288	153	148	130	30	19	1,071

\* Does not include prisoners transferred to other Gaols.

(1) "Delinquent Generations" A Home Office Research Unit Report London, H.M.S.O. 1960.

TABLE A

It is quite apparent from these figures that serious consideration should be given to the provision of alternative methods of treatment without delay and this topic is discussed further in Part IV<sup>(1)</sup>. The maintenance of a male prisoner costs approximately £19. per week and quite apart from the other considerations involved, non-custodial treatment is a comparatively light burden upon the taxpayer.

The Segregation of Offenders.

The alleged lack of segregation of offenders at Risdon Gaol has given rise to severe criticism in recent months. In fact, prisoners are segregated according to age and criminal sophistication as long as they are in their yards, and for dining purposes, each yard has separate accommodation. As the prison population is so small, however, it has been found impossible to maintain segregation within the workshops and there, first offenders do come into contact with recidivists. If prisoners are to receive instruction in trades to which they are most suited the problem cannot be solved by having different workshops attached to the different yards. Rather, the situation calls for the greater use of non-custodial treatment and if possible, an intermediate institution between Ashley Boys' Home and the Risdon Gaol.

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(1) See post p. 216 et seq.

Short Term Sentences.

An inspection of the facilities within the Prisons for the training of offenders confirmed the view expressed at the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders<sup>(1)</sup> that short term imprisonment allows little or no opportunity for constructive training. This finding extends also to educational courses where the very offenders who are likely to achieve the most from studying are those who are unsuitable for enrollment because of the short term sentences they receive. The essence of a short-term sentence must be therefore punitive rather than corrective.

Clearly there are cases where punitive treatment is required but it is submitted that far too many offenders are sentenced to prison for periods of 3 months or less. There should be a much greater reluctance on the part of the Courts to use this type of sanction.

Prisoners' Earnings.

The scale of earnings of prisoners is low in Tasmania compared with many prisons on the Mainland.<sup>(2)</sup> In Victoria, the minimum wage is generally 1/6d per day and the maximum is 4/- per day. However, prisoners

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(1) See ante p.69 et.seq.

(2) See Appendix A at p. 258

earning wages at such rates usually have to purchase their own tobacco and toilet requisites whereas in Tasmania these commodities are allotted free to each prisoner.

It is submitted that an increase in the Tasmanian rates of payment would have considerable advantages. Firstly, prisoners would have an added incentive to work harder, secondly, personal articles could then be purchased by the prisoners from their earnings and thirdly, a greater sum would be payable to prisoners upon their release when they generally need financial assistance of some sort or another. <sup>(1)</sup>

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(1) At the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in London in August 1960, the following declaration was made:-

- "(i) The principle of remuneration for prison labour was affirmed in rule 76 of the Standard Minimum Rules for the Treatment of Prisoners.
- (ii) The payment of token remuneration to prisoners doing productive work is incompatible with current theories on prison treatment.
- (iii) The establishment of a minimum wage would already be a step forward.
- (iv) The final aim should be the payment of normal remuneration equivalent to that of a free worker provided output is the same, both in quantity and quality. For this purpose prison work must be organised in an economic and rational way.
- (v) From now onwards such remuneration must be demanded from private employers for whom prisoners work.
- (vi) Such a system must be applied to all prisoners doing productive work, including those in domestic work whose remuneration shall be regarded as a charge on the regular budget of the Prison Administration.
- (vii) The payment of normal remuneration does not mean that the total remuneration is paid to the prisoner; deductions can be made by the administration to cover part of the cost of maintenance, the indemnification of the victim, the support of the family and the constitution of a savings fund against his release, and any taxes to which he may be subject. These deductions should not, however, prevent the prisoner from retaining a portion of his wages for his personal use."

as per report prepared by the Secretariat at p. 64.

The Treatment of Alcoholics and Drunks.

Frequently alcoholics and drunks are committed by the Courts to the Charitable Institution at Hayes by virtue of the power derived from Section 72 of the Police Offences Act 1935. Sometimes the offenders are subject to delirium tremens and they frequently require medical attention. Unfortunately the treatment available at Hayes for these men is very inadequate and it is highly undesirable that they should be sent there. If the imprisonment of alcoholics and drunks is necessary, it is preferable that they should be detained in a special section or yard at Risdon where medical attention would be more readily available. It is also desirable that members of Alcoholics Anonymous should visit the Prison on a regular basis, with a view to assisting prisoners when released.

VOLUNTARY AFTER-CARE ORGANISATIONS

Hobart Civilian Rehabilitation Committee

The Hobart Civilian Rehabilitation Committee was established in 1963 and was intended to provide a similar service to that provided by Committees in New South Wales but modified in accordance with the particular needs of Tasmania.

The New South Wales system was introduced in 1950 and the objectives of the Committees there are as follows:-

- "1. To provide for released prisoners, the opportunity of personal

rehabilitation and to ensure that any released prisoner, prepared to live a socially acceptable life, will have the chance of achieving this ideal.

2. To co-operate with and extend the field work of the Parole Officers of the Department of Prisons in the assistance and supervision of prisoners released on licence.
3. To work for better community understanding in the problems associated with the rehabilitation of prisoners."<sup>(1)</sup>

Since 1950 both metropolitan and country Committees have been set up under the supervision of Parole Officers who refer prisoners to them for assistance. The functions of the Committees and the Parole Service are necessarily complementary to one another, the Parole Officers each having contact with particular Committees and providing the specialised knowledge when required. The Parole Officers themselves also work in close contact with the prisoners while they are in Gaol and give considerable time to counselling and arranging group therapy sessions.

The particular strength of the Committees however is threefold: firstly, they can cover a much wider area than the present parole staff, and at relatively little cost to the Government; secondly, they have close contact with potential employers of ex-prisoners in their particular

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(1) "Out and About" Civil Rehabilitation Committee of New South Wales Vol. 1. No. 2. February 1964.

districts and the responsibility of rehabilitation is shared by a group rather than one individual and thirdly, members of voluntary Committees can extend the type of friendship to ex-prisoners which is denied to paid officials by the very nature of their status.

In New South Wales, the Committees meet regularly and at each meeting, certain prisoners who are nearing the end of their sentences are referred to them by number but not by name. The particular needs of the individual prisoners are described and different members of the Committee undertake to assist in any manner they can. One Committee member may attend to the employment angle, another to the accommodation angle and yet a third may provide help of a social nature such as introducing the ex-prisoner into a particular group for his recreational activity. From this point onwards, Committee members may visit the prisoners in whom they are interested with a view to establishing rapport with them.

As stated by the Minister for Justice for New South Wales, the Honourable N.J. Mannix: "The Civil Rehabilitation Committees, because of the voluntary nature of their work, are in an ideal position to undertake a campaign that would involve more organisations and more people in prison rehabilitation. Public education could take many forms such as lectures and films. I would like to see us reach here the level of community interest in prisons' work that exists in the Netherlands, where thousands of citizens are engaged in voluntary prison

after-care services."<sup>(1)</sup>

The Hobart Civil Rehabilitation Committee is yet in its infancy and is still endeavouring to find suitable and enthusiastic members and to delineate its functions and its relationship with the Adult Probation and Parole Service and other voluntary organisations. In Tasmania, there is less need than in New South Wales for Committees to be set up in outlying areas because the whole State is reasonably accessible to Hobart. However, the Committee still has potential strengths which should be complementary to the work carried on by the Parole Officers. These strengths are the possible contact with employers which individual committee members may have, and the social relationship which can be achieved between ex-prisoners and those working in a voluntary capacity. These strengths should not be under-estimated and vigorous efforts should be made to assist in the building up of the Committee both by ordinary members of the community and by those with official status.

Similar Committees are springing up in different parts of Australia, notably in Canberra and in Western Australia.

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(1) "Prisoner Rehabilitation" University of New England. Proceedings of a Seminar at Grafton 2nd - 4th August 1963 at p. 15.



Other Organisations

The Tasmanian Discharged Prisoners' Aid Society was established in 1937, some years before the Adult Probation and Parole Service was set up.

In the past, the functions of the Society have been more varied than they are at present. This situation is due partly to lack of financial resources, partly to the establishment of other organisations and partly to the failing health of several formerly active members of the Society.

There are at the present time about 10 members of the Society including the Governor of the Prison and representatives from various Churches and from St. Vincent de Paul.

Contact with the Society is purely voluntary on the part of the prisoners and the assistance now given is usually in the form of payment of fees or for textbooks required for educational courses, the provision of clothes or gifts of food for ex-prisoners and families, particularly at Christmas time.

The Discharged Prisoners' Aid Society receives a small Government subsidy of £150 per annum and other requirements are met by the financial resources of individual members. Very little is now done by the Society in assisting ex-prisoners to find employment.

Clearly, the scope of the Society is somewhat restricted by circumstances but nevertheless, and in the past particularly, it has

performed a valuable service to the community.

A high proportion of the members of the Discharged Prisoners' Aid Society have joined the new Civilian Rehabilitation Committee and it is possible the two organisations will merge at some future date.

There is no hostel in Hobart especially for ex-prisoners though limited accommodation is available at the Young Men's Christian Association Hostel for which a small payment is required, and at Ozanam House, run by the St. Vincent de Paul Society. Accommodation at Ozanam House is free and dinner and bed and breakfast are also provided. The full capacity of the Home is 7 and the regulations are that anyone seeking accommodation there must check in between the hours of 1 p.m. and 2 p.m. and no-one is accepted who is under the influence of liquor. The St. Vincent de Paul Society also runs a clothing store where needy people, including ex-prisoners can be supplied.

The Salvation Army does not at present run a Hostel in which ex-prisoners can be accommodated though it anticipates doing so in the near future.

### PART III

## TWO HUNDRED AND SIXTY-NINE OFFENDERS - THEIR CONVICTIONS AND SENTENCES

### Introduction

Having considered the sentencing powers at the Courts' disposal and the institutions to which both juvenile and adult offenders are committed, it is appropriate at this stage to investigate the manner in which the Courts are actually using their powers.

For this purpose a study was made of the files and records concerning as many offenders as it was possible to trace, who were convicted by the Supreme Court of Tasmania in 1961. The year 1961 was selected for two reasons: a Commonwealth census was taken during that year which permits certain comparisons between the criminal sample and the parent population, and it was the first full year when the Male division of the Risdon Gaol was occupied.

The study began with an inspection of the files of the Crown Law Office from which were taken the names of offenders, details of the offences for which they were convicted, the judges before whom they appeared, the sentences which were imposed upon them and any personal information that was available concerning the offenders themselves, such as age, marital status, occupation and family background. The personal information was often supplemented by later investigations.

The total number of criminals in respect of whom records could be traced at the Crown Law Office was 269, 262 of whom were male and 7 were female. Some offenders were convicted more than once by the Supreme Court in 1961, and in all, details were obtained of 299 convictions. This was slightly less than the number of 304, which was the number of Supreme Court convictions according to the Commonwealth Bureau of Census and Statistics. (1)

The Police records of 268 of the offenders were traced and inspected. Where antecedent reports were available, the contents of these were also noted.

67 offenders were placed on Probation and records were traced in respect of 66 of them. It was possible to check the behaviour of the probationers and to ascertain the percentage of them who completed their terms on probation satisfactorily.

The Risdon Gaol was then visited and the Prison records were available concerning all of the 145 offenders in the sample who were committed to Gaol. Considerable information regarding the backgrounds of the offenders was recorded by the Prison Officers, including details of physical and mental health, educational standards attained and religious affiliations. The behaviour of the offenders during imprisonment was also checked.

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(1) See Year Book of the Commonwealth of Australia No. 49 of 1963 Part VII, Education, Justice, Health and Welfare Services.

Finally, an investigation was made at the Head Office of the Social Welfare Department in an endeavour to learn more of the history of offenders who had Juvenile Court convictions or who had been in Institutions during childhood. This part of the study was only partially successful: the offenders had been drawn from widely divergent age groups and the subject matter recorded by staff of the Welfare Department changed with the passage of time. In some cases, there was doubt as to the correct identity of offenders, particularly if they had changed their names. Also, no information was available regarding those offenders in the sample who had originated from other States or Countries and had received convictions or been placed in Institutions elsewhere.

However, in spite of the deficiency of the material in these respects, the investigation provided a valuable insight into many personal tragedies of childhood and confirmed the basic need for the stabilisation of family life.

Although it was impossible to conduct personal interviews with all the offenders in the sample, it was decided to select a few at random and to obtain their own accounts of their childhood histories. Appendix B contains a report of the interviews with 5 offenders, 3 of whom were at Risdon Gaol in 1964, having been reconvicted since 1961 and 2 of whom had received no further convictions and appeared to have been successfully rehabilitated in the community. Although the offenders interviewed were selected at random, without regard to their childhood

experiences, it was observed that each of them had suffered serious emotional deprivations from their earliest days. 4 of the 5 came from homes broken by death or separation and 4 of the 5 had spent periods of childhood in one of the Tasmanian Institutions. The accuracy of the information supplied by the offenders was checked so far as possible and all except one of them were found to be remarkably truthful.

It is now proposed to analyse the material collected from the files of the different Departments and the ensuing discussion will be divided into three sections. Firstly, the background information concerning the offenders will be considered. This includes a division of the offenders into categories according to the types of crime they committed; then will follow a discussion concerning those with records of juvenile delinquency and those who have been submitted to institutional care as children. The age distribution of the offenders will then be considered, their marital status and their occupations. At the end of the first section, the apparent prevalence of group or gang behaviour amongst the offenders will be discussed.

The second section will contain an analysis of the different sentences which were passed upon the offenders and the apparent results during a follow-up period of  $2\frac{1}{2}$  years from the dates of the respective convictions in 1961.

Lastly, the sentences will be considered in the light of the different Judges who imposed them. The purpose of this part of the work is to ascertain whether or not there is a common and discernable

"sentencing pattern" to which all Judges subscribe. Only crimes classified as dishonest<sup>(1)</sup> have been included, for the sample is too small to permit comparisons with regard to other types of crime.

1. The Offenders Convicted by the Supreme Court in 1961.

(a) The offences for which the convictions were made.

The offences were divided into 5 categories for the purposes of discussion and the offenders were classified accordingly. The Table below shows the distribution of the offenders among the categories used:-

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Type of Crime	Dishonesty	Violence	Sex	Arson	Escape
Number of Offenders	228	19	26	3	6

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TABLE A

11 Offenders were classified under 2 of the above categories and one offender was classified under 3. The precise crimes falling within each category are set out in Appendix C.

It will be observed that the vast majority of offenders were convicted of crimes of dishonesty. Although this situation still exists, far more dishonest offenders are now being dealt with by Courts of

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(1) See post p. 198

summary jurisdiction by virtue of the 1963 amendment to the Justices Act 1959.<sup>(1)</sup> It will be recalled that in 1961, all offenders charged with breaking and entering were obliged to appear before the Supreme Court, regardless of the value of any property stolen.<sup>(2)</sup>

Of the 269 offenders, 64 were first offenders, 49 of these were convicted of crimes involving dishonesty, 5 were convicted of crimes of violence, 8 for sex crimes and 2 for arson. Thus first offenders represented 21.5% of those convicted of dishonesty, 26.3% of those convicted of crimes of violence and 30.8% of the sex offenders. Only 6 of the 64 first offenders were reconvicted of further offences within a following period of 2½ years from the dates of their original convictions.

It is now generally accepted that criminality does not manifest itself as a rule in one particular type of crime: criminals tend to be irresponsible and their anti-social behaviour may lead to convictions for various offences. It is sometimes contended that one type of crime, that of the road offender, is in no way related to other types of crime. However, various research projects have been designed to test this hypothesis and accident-prone drivers have been studied in England, in America and in Germany. It has been found that abnormally high portions of people convicted for traffic offences have criminal records for other types of offences.<sup>(3)</sup>

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(1) See Justices Act 1959 S.71 (as amended).

(2) See ante p.6.

(3) See "Crime and Personality" H.J.Eysenck 1964 Routledge & Kegan Paul Ltd. at p.19.



The police records of the offenders included in the sample tend to confirm that criminality is reflected by general anti-social behaviour: only 59 offenders had prior records of the same type of offences as they committed in 1961. 58 of these were dishonest offenders and one was a sex offender. 20 offenders had prior convictions for other types of offences and 126 offenders had previous records showing mixed types of offences. The vast majority of the 126 offenders namely 112 offenders were convicted for crimes of dishonesty in 1961, 8 were convicted for sex offences, 4 for crimes of violence and 2 for escape.

(b) Records of juvenile delinquency and institutional care during childhood

It should be emphasised that not all delinquent acts lead to charges being made and that in Tasmania, a conviction by a Children's Court does not necessarily result in the conviction being entered in a police record.<sup>(1)</sup> It is impossible to ascertain, therefore, the precise age at which delinquent tendencies appeared merely from an examination of Children's Court records.

However, the data collected revealed that 101 offenders had Children's Court convictions and Police records were inspected relating to 96 offenders against whom convictions had been recorded during childhood. The ages of the offenders at the time of their first recorded

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<sup>(1)</sup> Child Welfare Act 1960 S.20 (1).

convictions indicate that serious delinquent conduct becomes increasingly common from the age of 11 onwards:-

<u>Age of First Recorded Conviction</u>	<u>Number of Offenders Convicted</u>
8	3
9	6
10	8
11	13
12	14
13	11
14	15
15	16
16	<u>10</u>
Total	<u>96</u>

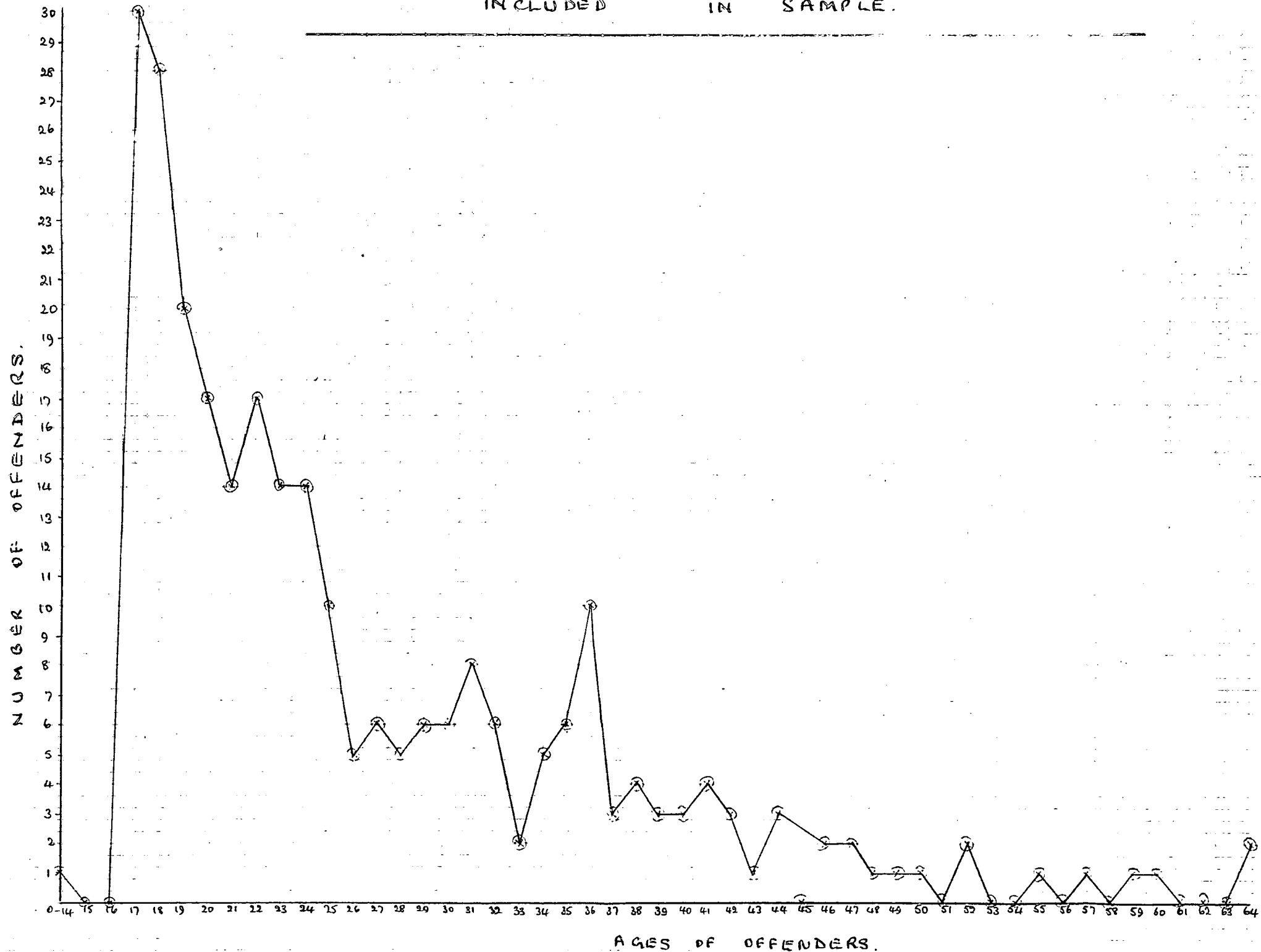
TABLE B.

The records revealed that 65 of the offenders included in the sample had spent some time of their lives in Juvenile Institutions; 58 of these also had recorded Children's Court convictions and the remaining percentage came from homes broken by death or separation or from homes which were morally corrupt.

(c) Ages of offenders at date of 1961 conviction.

The problem of crime is generally associated with youth rather than with maturity. Professor and Mrs. Glueck stress that the process of maturation plays a vital role in "reformation" and see the persistent

GRAPH SHOWING AGE DISTRIBUTION OF ALL OFFENDERS.  
INCLUDED IN SAMPLE.



offender as one who is mature in years but immature in respect to emotional, intellectual and physical integration.<sup>(1)</sup>

As may be expected, a high proportion of the offenders included in the sample were under the age of 30 in 1961. The median age of all the offenders was 23 years and the median age of the dishonest offenders as a group was also 23. The sex offenders were slightly younger, the median age being 22.5 years, and the median age of those convicted of crimes of violence was 25. The age distribution of the 269 offenders is shown on the graph below and it will be observed that there is a general decrease in crime after the age of 24 although there is a slight rise in the middle thirties. It seems likely that this phenomenon is associated with drinking problems which are particularly prevalent amongst members of that age group. Table C below shows the number of offenders who were reported by the police or probation officers to be heavy drinkers:-

Age Group .....	Total Number of Offenders	Number of Heavy Drinkers	Percentage of Heavy Drinkers
Up to 21	109	22	20.2%
22 - 29	78	28	35.9%
30 - 37	44	20	45.5%
38 - 45	22	10	45.5%
Over 46	<u>16</u>	<u>7</u>	43.7%
Totals	<u>269</u>	<u>87</u>	

(1) "After Conduct of Discharged Offenders" Sheldon Glueck and Eleanor Glueck MacMillan & Co. Ltd., London 1946 at p.76.

TABLE C.

As so few offenders were convicted of crimes other than crimes of dishonesty, valid comparisons cannot be made with regard to the drinking habits of offenders for each type of crime within the different age groups. However, Table D below indicates that a particularly high proportion of those convicted of crimes of violence have serious drinking problems:-

Type of Crime	Total Number of Offenders	Number of Heavy Drinkers	Percentage of Heavy Drinkers
Dishonesty	228	74	23.7%
Violence	19	10	52.7%
Sex	<u>26</u>	<u>6</u>	23.1%
Totals	<u>273</u>	<u>90*</u>	

TABLE D.

\* 6 offenders are included in more than one of the above categories.

(d) Marital Status.

A study of the marital status of the offenders is only meaningful if considered in the light of their age distribution. Unfortunately the Commonwealth census of 1961 does not permit a comparison to be made between the parent population and the sample of the criminal population but the following Table shows the marital status of the offenders whose records were investigated:-

Age	Single Offenders	Married Offenders	Divorced Offenders	Separated Offenders	No infor- mation
14	1	-	-	-	-
17	27	1	-	2	-
18	28	-	1	-	-
19	16	2	1	-	-
20	13	3	-	1	-
21	9	4	-	-	1
22	11	3	-	1	2
23	6	5	-	2	1
24	8	6	-	-	-
25	-	6	-	2	2
26	2	2	-	1	-
27	3	3	-	-	-
28	1	3	-	-	1
29	1	4	1	-	-
30	3	2	-	1	-
31	4	1	-	2	1
32	-	3	-	2	1
33	1	1	-	-	-
34	-	3	-	1	1
35	1	4	-	-	1
36	2	8	-	-	-
37	1	1	1	-	-
38	-	-	-	3	1
39	2	-	1	-	-
40	-	-	-	3	-
41	2	1	-	1	-
42	1	1	-	-	1
43	-	1	-	-	-
44	-	1	-	2	-
C/F	143	69	5	24	13

Age	Single Offenders	Married Offenders	Divorced Offenders	Separated Offenders	No infor- mation
B/F	143	69	5	24	13
45	-	-	-	-	-
46	-	1	-	1	-
47	-	1	1	-	-
48	-	-	-	-	1
49	-	1	-	-	-
50	-	-	-	1	-
51	-	-	-	-	-
52	-	1	-	1	-
53	-	-	-	-	-
54	-	-	-	-	-
55	-	-	-	-	1
56	-	-	-	-	-
57	-	1	-	-	-
58	-	-	-	-	-
59	-	1	-	-	-
60	-	-	-	1	-
61	-	-	-	-	-
62	-	-	-	-	-
63	-	-	-	-	-
64	<sup>1</sup> (widower)	-	-	-	1
Totals	144	75	6	28	16

TABLE E

\*includes defacto relationships.

Provided an individual is capable of forming normal emotional relationships with the opposite sex, marriage is likely to have a

stabilising effect upon him. However, it has been observed frequently that many criminals, particularly those with psychopathic tendencies are abnormal in this respect and that they are incapable of entering into and maintaining conjugal relationships<sup>(1)</sup>. The offenders in the sample fall into 3 main groups according to their ages: those under 25, the majority of whom were single; those between 25 and 36, the majority of whom were married and those over the age of 36, the majority of whom were single either through separation or divorce or because they never married. Thus it appears that a relatively high proportion of the criminal population never marry. Those who do so but persist in their defiance of the law after marriage are frequently those who are incapable of forming normal relationships with the opposite sex and their conduct generally brings about a breakdown in marriage.

(e) Occupation

The occupations of the offenders included in the sample have been classified to correspond with the classification of the Commonwealth Bureau of Census and Statistics:-

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(1) Bowlby examined the personality characteristics of forty-four delinquents and found a number of them to be of an "affectionless type" He said of them "Since they are unable to make genuine emotional relations, the conditions of a relationship at a given moment lacks all significance for them." "Maternal Care and Mental Health" Bowlby J. 1951 at p.32.



Occupation		Number of Employees in Tasmania	Number of Employees in criminal sample
1. Professional, Technical & Related Workers			
	Male	6,160	3
	Female	5,301	-
2. Administrative, Executive & Managerial Workers			
	Male	7,191	4
	Female	1,120	-
3. Clerical Workers	Male	6,819	9
	Female	7,550	1
4. Sales Workers	Male	5,229	2
	Female	4,725	-
5. Farmers, Fishermen, Hunters, Timbergetters and Related Workers			
	Male	16,649	16
	Female	905	-
6. Miners, Quarrymen & Related Workers			
	Male	2,208	1
	Female	-	-
7. Workers in Transport & Communications Occupations			
	Male	7,406	9
	Female	882	-
8. Craftsmen, Production, Process Workers & Labourers			
	Male	44,983	150
	Female	3,799	-
9. Service, Sport & Recreation Workers			
	Male	3,500	3
	Female	4,957	-

Occupation		Number of Employees in Tasmania	Number of Employees in criminal sample
10. Armed Forces	Male	265	1
	Female	8	-
11. Occupation Inadequately described			
	Male	880	22
	Female	381	-

TABLE F.

The above classification did not include all the offenders whose records were studied: 36 were recorded as being unemployed, 6 were invalid pensioners and 6 of the 7 female offenders performed full time home duties.

Although the highest proportion of workers in the parent population was classified as craftsmen, production and process workers, a far higher proportion of the criminal population fell within this category and many of them were in fact unskilled labourers.

The high incidence of unskilled workers among the criminal population is by no means confined to Tasmania: similar findings have been made all over the world. Unfortunately a vicious circle occurs with alarming frequency: an underprivileged home, low intelligence and emotional instability lead to restricted industrial opportunities which in turn lead to lack of incentive, irregular employment and further instability. All these factors are common amongst offenders and confirm the urgent need for the strengthening of the family unit<sup>(1)</sup>.

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<sup>(1)</sup> See Part IV, post p. 211

(f) The Commission of the Crimes.

In the course of collecting the data, it was observed that dishonest offenders frequently committed their offences either with another person or in collaboration with another person. In all, the 228 offenders convicted of crimes involving dishonesty, received between them 254 Supreme Court convictions in 1961. 144 or 56.7% of these convictions related to crimes committed "in company".

It was anticipated that young offenders would show a greater tendency to commit crimes "in company" than older offenders but the material collected did not support this hypothesis. 160 or 62.9% of the total number of offences of dishonesty were committed by offenders under the age of 26 years and 94 or 36.1% were committed by offenders of the age of 26 years or more. Of the 144 crimes which were committed by offenders "in company", 97 or 67.4% were committed by offenders under the age of 26 and 47 or 32.6% by those over that age. Thus there was only a very slightly greater proportion of offenders in the younger age group than in the older age group. This is an interesting finding and indicates that group or gang behaviour amongst young people is not so common in Tasmania as it is in many other parts of the world.

The number of offenders who were convicted of sex crimes and crimes of violence was too small to permit an assessment of the extent of group behaviour involved in the commission of these crimes.

## 2. The Offenders and their Sentences.

Originally it was proposed to compare the effects of the different types of sentences by means of statistical computations based upon the reconviction rates of the offenders. However, this project was abandoned for a variety of reasons: firstly the existence or non-existence of reconvictions is a doubtful measure of the success of treatment. Those who have no further convictions may have been merely fortunate in that their offences escaped detection. Also, reformation of an offender may take place in spite of so-called treatment rather than because of it. Secondly, although the police records reveal convictions in a particular sequence, they do not reveal the dates upon which crimes were actually committed, thus a later conviction may in fact relate to an earlier crime. Thirdly, if valid comparisons are to be made as to the strength of character of different individuals in resisting temptation to transgress the law, it is important they should have been exposed to temptation for the same length of time. As the sample represents convictions made in 1961, those who were sentenced to longer terms of imprisonment have only been at large for a relatively short space of time and 6 offenders were in fact, at the time of writing still in prison.

The only really successful method of conducting a follow-up study is by personal contact with the offenders, coupled with a reliable record of offences committed by them since the termination of treatment. Thus the material collected during the course of the present study should constitute a valid basis for further studies at a later date. At this

stage it is only possible to identify certain trends in the subsequent behaviour of those exposed to the different forms of treatment. The observations made in the following pages may or may not be confirmed by later investigations.

Fines.

The Supreme Court imposes relatively few fines; only 9 offenders from the total sample of 269 were fined. The 9 offenders were all convicted of crimes of dishonesty, 3 of them being first offenders. 8 Offenders were employed in jobs classified in Table F as "craftsmen, production, process workers and labourers" and one was a retired pensioner. Fines are commonly mingled with other types of penalties, particularly with suspended sentences.

The Table below sets out full details of the 9 offenders in the sample who were fined by the Supreme Court:-

# FINES

No.	Offence	Age	Occupation	Family Commit- ments	No.of prior convictions for same type of offence	Amount of Fine	Other penalty imposed in respect of same offence	Subsequent record during follow-up period of 2½ years.
1.	Stg.	47	Fettler	Divorced	2	£30	3mos. s.s.; G.B. for 2 yrs.	1. Driving a motor vehicle under the influence of liquor.
2.	Stg/ B/E	21	Labourer	Single	2	£25	-	1. Stg/B/E.
3.	Stg/ B/E False preten- ces.	18	Labourer	Single	1	£25	6mos. s.s.; G/B for 2 yrs; 6wks. to pay. In de- fault, imprison- ment for 4 wks.	1. Illegal use 2. B/E/Stg. 3. Insufficient means 4. Stg. 5. Insufficient means
4.	Stg/Hse Breaking	24	Bulldozer driver	Dependent wife	Nil	£25	-	1. Stg/B/E
5.	Stg/ B/E	20	Labourer	Assisting Mother	1	£40	8mos. s.s; Bond £40, own recog. for 3yrs; on probation; resttn. as ordered by Probation Officer.	Nil
6.	B/E un- lawful injury to property	41	Carpenter & Joiner	Single	2	£25	Payment for injury to property	1. Indecent exposure

FINES (continued)

No.	Offence	Age	Occupation	Family Commit- ments	No.of prior convictions for same type of offence	Amount of Fine	Other penalty imposed in respect of same offence	Subsequent record during follow-up period of 2½ years.
7.	Receiv- ing	64	Retired Pensioner	No infor- mation	Nil	£50	-	Nil
8.	Receiv- ing	30	Barman	Dependent wife & 2 children	Nil	£25	3mos. s.s;no crime of dis- honesty for 3yrs. In default of pay- ment within 1 mo- nth,imprisonment	1. Assault
9.	Stg/ B/E	19	Labourer	Single	2	£50	10mos.s.s;G.B. for 3yrs;Bond for £50, own recog;on prob- ation for 3yrs;resttn as directed by P.O.	Nil

KEY

Stg. = Stealing	recog. = recognizance
B/E = breaking & entering	P.O. = Probation Officer
S.S. = Suspended Sentence	resttn = restitution
G.B. = Good Behaviour	mos. = months

TABLE G.

It is interesting to observe that the only 3 offenders who did not receive subsequent convictions were fined wither £40 or £50 whereas the other offenders were fined smaller amounts. It is by no means unusual for an unskilled labourer in Tasmania to earn between £20 and £30 per week though employment is often irregular. Although the sample is small, the indication is that larger amounts generally act as a more effective deterrent than smaller amounts and this is confirmed by findings which have been made in England in recent years.<sup>(1)</sup> It has already been observed elsewhere<sup>(2)</sup> that fines must be related to the ability of the offender to pay. The probable attitude of the offender is also relevant and the time may come when psychological tests are made before any type of sentence is imposed.

The fruits of research in England indicate that heavier fines should be used more frequently and the present study appears to confirm this finding.

### Probation

The classification of probationers as "satisfactory" or "unsatisfactory" without further information can be highly misleading for there are many factors to be taken into account. For this reason, the offenders who

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(1) "Alternatives to Short Terms of Imprisonment" 1957 H.M.S.O. London.

(2) See ante p. 24.



were placed on probation by the Supreme Court in 1961 have been considered in detail in Table H below. It should be emphasised that the term "satisfactory" does not indicate complete reformation of character but rather that the probationer avoided a major conflict with the law during his period on probation. In fact, 36 of the 67 probationers were convicted of further offences during probation but they were not all classified as "unsatisfactory". The unsatisfactory probationers consist of 16 who were convicted of subsequent offences and whose periods on probation were terminated as a result of breach of bond proceedings, 6 who absconded from Tasmania and 2 who left Tasmania with permission but failed to maintain contact as required.

According to this classification, the offenders were divided as follows:-

Completion of Probation . . . . .	Number	Percentage
Satisfactory	42	62.7
Unsatisfactory	24	35.8
Record not traced	1	1.5
	67	100.0%

TABLE I

It will be observed from Table H that the mingling of other sentences with probation is very common. In 39 cases, suspended sentences were also imposed and 13 probationers, who were placed on probation and

PROBATION

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Proceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily.
			Same type	other type						
1.	Stg.B/E	19	3	-	Fine £50; 10mos.s.s; G.B. 3yrs; Recog.£50; resttn as directed.	Nil	Nil	No	No	Satisfactory
2.	Stg.B/E	20	1	-	Fine £40; 8mos.s.s; G.B. 3yrs; Recog.£40; resttn as directed.	Nil	Nil	No	No	Satisfactory
3.	Stg.B/E Burglary	23	5	1	12mos.s.s; G.B. 2yrs; Recog.£100; to obey P.O.'s directions	Nil	Nil	No	No	Satisfactory
4.	Stg.	22	2	-	Recog.£25; G.B. 3yrs.	(1) B/E; Stg. (2) Illegal use	Nil	Yes	No	Unsatisfactory
5.	Burglary	29	-	2	Recog.£100; G.B. 2yrs. 12mos. s.s.	Nil	Nil	No	No	Satisfactory
6.	Stg.House- breaking	30	-	-	Recog.£50; G.B. 3yrs; Judgment when called upon	Nil	Nil	No	Yes	Unsatisfactory
7.	Stg.B/E	22	-	-	Recog.£25; G.B. 2yrs; Judgment when called upon	Nil	Nil	No	No	Satisfactory
8.	Stg.B/E	19	1	-	Recog.£50; G.B. 2yrs; Judgment when called upon	(1) Obstruct Police (2) Unlawful use	Nil	No	No	Satisfactory
9.	Accessory after fact of Stg.B/E	22	1	1	Recog.£25; G.B. 2yrs; 3 mos. s.s.	(1) Negligent driving (2) Speeding	Nil	No	No	Satisfactory
10.	Defilement	17	-	3	Recog.£50; G.B. 2yrs; Judgment when called upon	(1) Unlawful possession	Nil	No	Yes	Unsatisfactory
11.	Stg.B/E	17	2	2	Recog.£25; G.B. 2yrs; Judgment when called upon	Nil	Nil	No	No	Satisfactory

PROBATION (continued)

No. Offence	Age	No. of Prior Convictions same type	Prior other type	Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Pro- ceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily.
12. Stg.B/E	17	5	3	Recog.£50;G.B.2yrs; 6 mos. s.s.	(1)Assault; (2)Assault female; (3)Assault.	Nil	Yes but adjourned sine die	No	Satisfactory
13. Stg.	18	1	-	Recog.£100;G.B.2yrs; 9mos. s.s;resttn as directed by P.O.	(1)Dangerous dri- ving;failure to stop at accident	Nil	Yes	No	Unsatisfactory and suspended sen- tence served.
14. Stg.	17	2	-	Recog.£50;G.B.2yrs; Judgment when called upon	(1)Stg.	Nil	Yes but probation extended for further yr.	No	Satisfactory
15. Stg/B/E.	18	1	-	Recog.£50;G.B.2yrs; Sentence when called upon	Nil	Nil	No	Yes	Unsatisfactory
16. Stg.B/E.	19	1	-	Recog.£50;G.B.2yrs; Sentence when called upon	(1)Unlawful use; (2)Stg;(3)Stg; (4)Stg;(5)Stg; (6)B/E,Stg.	Nil	Yes	No	Unsatisfactory
17. Stg.B/E.	17	4	-	Recog.£100;G.B.3yrs; 9mos. s.s;not to assoc- iate with those with whom convicted	(1)Destroy property (2)B/E;Stg.	Nil	Yes	No	Unsatisfactory
18. Stg.B/E	17	3	-	Recog.£100;G.B.2yrs; 6 mos. s.s.	Nil	Nil	No	No	Satisfactory
19. Stg.B/E	17	1	2	Recog.£100;G.B.2yrs; 6 mos. s.s.	Nil	Nil	No	No	Satisfactory
20. Stg.House-17 breaking		3	1	Recog.£50;G.B.3yrs; Judgment when called upon	(1)Stg;(2)Stg.	Nil	No	No	Satisfactory
21. Stg.B/E	24	4	5	Recog.£100;G.B.2yrs; 6 mos. s.s.	Nil	Nil	No	No	Satisfactory

PROBATION (continued)

No.	Offence	Age	No. of Prior Convictions same type	Prior other type	Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Pro- ceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
22.	Stg.B/E	18	2	1	Recog. £100; G.B. 2yrs; 6 mos. s.s.	(1) Unnatural car- nal knowledge	Nil	Yes	No	Unsatisfactory
23.	Stg; House- breaking	18	2	2	Recog. £50; G.B. 2yrs; 6 mos. s.s.	(1) Damage to prop- erty (2) Stg; (3) B/E, Burglary, Stg; (4) B/E, Stg.	(1) Unlawful use (2) Stg, bur- glary	Yes	No	Unsatisfactory
24.	Stg.B/E	17	3	1	9 mos. s.s.; G.B. 2yrs.	(1) Insufficient means; (2) Stg, receiving	Nil	Yes	No	Unsatisfactory and suspended sentence served.
25.	Stg.B/E Attempted B/E	18	3	-	Recog. £100; G.B. 2yrs; 6 mos. s.s.; obey dir- ections of P.O. as to special training	Nil	Nil	No	No	Satisfactory
26.	Stg.B/E	18	7	-	Recog. £50; G.B. 2yrs; 12 mos. s.s.; obey direct- ions of P.O. as to psych- iatric treatment	(1) Stg; (2) Loiter for immoral pur- poses; (3) Larceny; (4) Burglary, Stg.	Unlawful use; Yes attempted un- lawful use; Escape.		No	Unsatisfactory and suspended sentence to be served
27.	Stg.B/E	18	2	-	Recog. £25; G.B. 2yrs; 6 mos. s.s.; not to leave district without consent of P.O.	Nil	Nil	No	No	Satisfactory
28.	Stg. Forgery & Uttering	20	2	-	Recog. £25; G.B. 2yrs; Sentence when called upon.	(1) Stg; (2) Unlaw- ful annoyance	Nil	Yes but probation extended	-	Record could not be traced
29.	Stg.B/E	17	1	-	Recog. £100; G.B. 2yrs; 6 mos. s.s.; obey directions of P.O. as to psychiatric treatment	(1) Unlawful use; (2) Housebreaking, Stg.	(1) Receiving	Yes	No	Unsatisfactory and suspended sentence served

PROBATION (continued)

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Proceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
30.	Stg. B/E	18	-	1	Recog. £50; G.B. 3yrs; 9 mos. s.s.	(1) Unlawful use	Nil	No	No	Satisfactory
31.	Stg.	17	-	-	Recog. £50; G.B. 3yrs; obey P.O.'s directions re moving to Victoria	(1) Larceny; (2) Unlawful use; (3) Factory breaking & Stg.	Nil	Pending	Went to Victoria with permission of P.O.	Unsatisfactory
32.	Stg; House-Breaking; B/E	19	1	2	Recog. £50; G.B. 3yrs; 6 mos. s.s.	(1) Housebreaking (2) Unlawful use	(1) Unlawful Use; (2) Housebreaking Stg; (3) Unlawful use Stg.	Yes	No	Unsatisfactory and suspended sentence served.
33.	Stg. B/E	20	2	3	Recog. £50; G.B. 3yrs; 12 mos. s.s.	(1) Non-payment of fine; (2) Failure to yield at pedestrian crossing	Nil	No	No	Satisfactory
34.	Stg. B/E	19	-	2	Recog. £100; G.B. 2yrs; 6 mos. s.s.	(1) Negligent driving; (2) Driving under the influence	Nil	No	No	Satisfactory
35.	Stg.	20	4	1	9 mos. s.s.; G.B. 3yrs.	Nil	Nil	No	No	Satisfactory
36.	Stg. B/E	17	-	-	Recog. £25; G.B. 2yrs; Judgment when called upon	Nil	Nil	No	No	Satisfactory
37.	Receiving	19	-	-	Recog. £25; G.B. 2yrs; Judgment when called upon	Nil	Nil	No	No	Satisfactory

PROBATION (continued)

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Proceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
			same type	other type						
38.	Stg.B/E	17	-	-	Recog.£50;G.B.3yrs; 6 mos. s.s.	(1)No rear light (2)Causing undue noise	Nil	No	No	Satisfactory
39.	Stg.House-Breaking	17	2	-	Recog.£25;G.B.12mos. Sentence when called upon	Nil	Nil	No	No	Satisfactory
40.	Stg.B/E	21	1	-	Recog.£100;G.B.2yrs; 6 mos. s.s.	(1)Larceny	Nil	Pending	Went to South Australia with P.O's permission but failed to keep contact	Unsatisfactory
41.	Stg.B/E	19	-	-	Recog.£25;G.B.2yrs; Judgment when called on	(1)Assault police; (2)Drive under influence	Nil	No	No	Satisfactory
42.	Stg.B/E	18	-	1	Recog.£25;G.B.12 mos. Judgment when called on	Nil	(1)Stg.	No	No	Satisfactory
43.	Stg.B/E	18	-	-	Recog.£100;G.B.2yrs; 6 mos. s.s.	Nil	Nil	No	No	Satisfactory
44.	Stg.	18	-	-	Recog.£200;G.B.2yrs; Sentence when called on; resttn.as directed by P.O.	Nil	Nil	No	No	Satisfactory
45.	Stg.B/E	17	-	-	Recog.£100;G.B.2yrs; 6 mos. s.s.	(1)Damage to property	Nil	No	No	Satisfactory
46.	Stg/B/E	18	-	-	Recog.£25;G.B.2yrs; 3 mos. s.s.	Nil	Nil	No	No	Satisfactory
47.	Stg.B/E	20	1	-	Recog.£100;G.B.2yrs; 12mos.s.s.obey P.O's directions	Nil	Nil	No	No	Satisfactory

PROBATION (continued)

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Proceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
48.	Stg.B/E	17	4	1	Recog.£50;G.B.2yrs; No crime of serious dishonesty; 6mos s.s; obey P.O.'s directions	(1)Loitering (2)Damage to property	Nil	No	No	Satisfactory
49.	Escape	23	-	1	Recog.£50;G.B.3yrs.	(1)Imposition; (2)Drunkenness; (3)Idle & disorderly; (4)Wilful damage	Nil	Pending	Yes	Unsatisfactory
50.	Indecent Assault	18	-	2	Recog.£50;G.B.2yrs.	Nil	Nil	No	No	Satisfactory
51.	False Pretences	25	1	-	Recog.£100;G.B.2yrs; 6mos. s.s.obey P.O's directions as to resttn.	Nil	Nil	No	No	Satisfactory
52.	Stg.B/E	17	-	-	Recog.£50;G.B.2yrs; no crime of dishonesty for 2 yrs;6 mos. s.s.	(1)Unlawful use (2)Stg.	Nil	No	No	Satisfactory
53.	Stg.	23	-	-	Recog.£25;G.B.2yrs; Sentence when called upon; resttn.at £6 per fortnight	Nil	Nil	Pending conditions of probation not complied with	Yes	Unsatisfactory
54.	Stg.B/E Burglary	21	1	-	Recog.£100;G.B.2yrs; 12mos.s.s;obey P.O's directions	(1)Obstruct police	Nil	No	No	Satisfactory
55.	Stg.B/E Aiding & abetting Stg.& B/E	29	5	1	Recog.G.B.3yrs; 6 mos. s.s.	(1)Failure to pay fine;(2)Stg.	(1)False Pretences (2)Under influences (3)False Pretences	Yes	No	Unsatisfactory and suspended sentence served

PROBATION (continued)

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Pro-ceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
56.	Stg. Forgery & Uttering	36	-	1	Recog. £50; G.B. 3yrs; 9 mos. s.s.	Nil	Nil	No	No	Satisfactory
57.	Stg. B/E	47	2	3	30 days s.s.; G.B. 12mos.	Nil	Nil	No	No	Satisfactory
58.	Stg. Forgery & Uttering	21	1	-	Recog. £25; G.B. 2yrs; sentence when called on	Nil	(1) Stg. & False pretences	No	No	Satisfactory
59.	Stg. B/E	23	-	-	Recog. £50; G.B. 3yrs; Judgment when called on	Nil	Nil	No	Yes	Unsatisfactory
60.	Stg. B/E	19	-	1	3mos. s.s.; no crime of dishonesty for 2 yrs.	(1) Unlawful use; (2) Hbkg; Stg.	Nil	Yes but adjourned sine die	No	Satisfactory
61.	Stg. B/E	19	7	-	Recog. £25; G.B. 3yrs; 12mos. s.s.; resttn. of £70	(1) Stg. & False Pretences	Nil	Yes	No	Unsatisfactory and served suspended sentence
62.	Stg. B/E	18	8	1	Recog. £25; G.B. 2yrs; 6 mos. s.s.	Nil	(1) Larceny	No	No	Satisfactory
63.	Stg. B/E	18	2	-	Recog. £25; G.B. 2yrs; 4 mos. s.s.	(1) B/E; Stg, injury to property (2) Unlawful use	(1) Goods in custody; (2) B/E & Stg; (3) B/E & Stg.	Yes	No	Unsatisfactory
64.	Stg. B/E	17	5	-	Recog. £50; G.B. 3yrs; Judgment when called on	(1) B/E; Hsbkg; receiving; Stg; (2) Unlawful Use; Stg.	(1) B/E, Stg.	Yes	No	Unsatisfactory
65.	Stg. B/E	19	1	1	Recog. £25; G.B. 3yrs; 12mos. s.s.	(1) B/E; Stg.	Nil	Yes	No	Unsatisfactory and suspended sentence served



PROBATION (continued)

No.	Offence	Age	No. of Prior convictions		Other types of penalty imposed for same offence	Convictions during Probation	Convictions After Probation	Whether Breach of Bond Proceedings taken	Whether Absconded from Jurisdiction	Probation completed satisfactorily or terminated unsatisfactorily
			same type	other type						
66.	Forgery & Uttering	33	-	1	Recog.£25;G.B.3yrs; 9 mos. s.s.	Nil	Nil	No	No	Satisfactory
67.	Stg.B/E	30	3	1	Recog.£50;G.B.3yrs; Judgment when called on	(1)B/E;Stg.	(1)Escape	Yes	No	Unsatisfactory

KEY

Stg. = Stealing  
 B/E = Breaking and entering  
 S.S. = Suspended Sentence  
 G.B. = Good Behaviour  
 P.O. = Probation Officer  
 mos. = Months

TABLE H

given suspended sentences, in fact failed to complete their probationary periods satisfactorily. However only 8 of the 13 were required to serve their suspended sentences. The vast majority of probationers were sentenced under the Probation of Offenders Act 1934 and specified sums of money were attached to their recognizances. It is of some interest that in no cases the attached amounts were estreated from offenders who broke the terms of their Court orders.

It is now relevant to consider some of the predominant characteristics of those placed on probation by the Supreme Court. Probation is used primarily for offenders under the age of 21 in an endeavour to keep them out of prison. In the sample, 48 probationers were under the age of 21 including the only 2 female offenders who were placed on probation.

The data collected revealed that 32 of the 48 offenders under the age of 21 completed their terms on probation satisfactorily, whereas 10 of the 18 offenders over the age of 21 did so. Thus the proportion of younger offenders responding favourably to probation is considerably higher than the proportion of offenders over the age of 21.

11 probationers had spent some period of childhood in Juvenile Institutions and only 4 of the 11 completed their terms on probation satisfactorily.

It is extremely difficult to classify the home environments of the offenders from the information which was available for two reasons: firstly, a great deal of the interviews between the probationers and their

officers take place at the Probation Office, and secondly, even in the cases where frequent visits to the homes are required, the reports are based upon the subjective opinions of the officers. However, in at least half of the files, there was ample evidence of under-privileged circumstances and poor emotional relationships. If some objective criteria were available by which all the homes could be assessed, there is little doubt that a far higher proportion of the offenders would be seen to come from poor home environments.

Among the 67 offenders, there were 21 or 31.3% who were recorded by the police or probation officers as being heavy drinkers, but there is no evidence that they profited less from their periods on probation than the other offenders.

14 of those placed on probation were first offenders, 10 of whom completed their terms satisfactorily and 4 of whom did not. Thus the percentage of successful probationers amongst the first offenders is 71.4% which is considerably higher than amongst all the 67 probationers as a group, of whom 62.7% completed their terms satisfactorily.<sup>(1)</sup> However, it is more meaningful to assess the progress of the probationers according to the nature of their prior records rather than upon a purely numerical basis of all previous convictions.

24 probationers had no prior records of similar offences and 17 of

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<sup>(1)</sup> See ante p.158

them or 70.8% completed their terms on probation successfully. At the other end of the scale, 11 probationers had more than 3 convictions for the same type of offence of whom 6, or 54.6% completed their terms satisfactorily. Although the sample is small, it demonstrates that a probationers likelihood of success depends to a certain extent upon factors completely outside his relationship with his probation officer.

Relatively few offenders are placed on probation for offences other than dishonesty: in the sample, there was one escapee, one offender convicted of defilement and one convicted of indecent assault. Amongst the dishonest offenders, practically all of them were convicted of stealing, either alone or in combination with other offences. It would be interesting to test the hypothesis that those convicted of offences involving stealing respond more favourably to probation than those convicted of false pretences and similar offences but the material was insufficient to do so.

Only 3 of the probationers in the sample were not English-speaking by birth and it is of some interest that the 3 offenders, 2 of whom came from Malta and one from Yugoslavia, all absconded from Tasmania without permission. It seems fairly clear that the 3 offenders did not fully understand the Conditions of their discharge and this confirms the need for more careful explanation of the precise terms of sentences.

It is difficult to compare the relative success of the probation system in different jurisdictions for various reasons: offenders who are considered suitable for probation in one jurisdiction may be considered

unsuitable in another and be sentenced to imprisonment instead; techniques in dealing with offenders vary between individual officers and to an even greater extent between different countries and States; the successful completion of a period on probation depends partly upon the relationship established between the probationer and his officer and partly upon independent factors, such as maturation. It is virtually impossible to assess the relative importance of these factors. Lastly, the criteria by which "success" is estimated are not constant; in some jurisdictions, breach of bond or similar proceedings lead to the termination of probationary periods for far smaller offences than in other places.

In spite of these difficulties, the results of probation in Tasmania seem relatively good and they certainly merit the investment of considerable funds to expand the system and to provide a Training Course for Probation Officers.

#### Recognizances without Probation

It will be recalled that the Supreme Court has power to discharge offenders on recognizance directly under the Criminal Code 1924<sup>(1)</sup> in addition to its somewhat similar power under the Probation of Offenders Act 1924.

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(1) Criminal Code 1924 S.386(1) (e).

Generally, the Supreme Court uses its "direct" power in cases where it is thought unnecessary to place an offender under the supervision of a Probation Officer. This may be because the offender is unlikely to respond to supervision or because a bond is considered an adequate deterrent. The most usual form of recognizance required by the Supreme Court is that the offender shall be bound to be of good behaviour for a specified period of time and a penalty for non-compliance is generally attached to the obligation. Quite commonly, "direct" recognizances are mingled with suspended sentences.

40 offenders in the sample were discharged on recognizances under the Criminal Code 1924, 21 of whom were also given suspended sentences varying in length between 3 months and 12 months. 30 of the 40 offenders or 75%, had no previous convictions for similar offences.

Generally, those who are discharged under section 386 (1) (c) of the Criminal Code 1924 are older than those released on probation: only 5 of the 40 offenders in the sample were under the age of 21. Recognizances without probation are required quite frequently from offenders convicted of less serious sex crimes, particularly from those convicted of defilement.

Unfortunately very little information was available regarding the personal backgrounds of this group of offenders. It appeared, however, that none of them had been in Juvenile Institutions as children. The percentage of offenders who were described by Police or Probation Officers as being heavy drinkers was 37.5%, which was slightly higher than the

percentage of heavy drinkers amongst the probationers: this phenomenon was probably related to the greater incidence of offenders over the age of 21 in the present group.

Only 8 of the 40 offenders were convicted of subsequent offences during a follow-up period of  $2\frac{1}{2}$  years from their original dates of conviction. It is interesting to note that 4 of the 8 were convicted of defilement in 1961 and the balance, of stealing and breaking and entering with stealing. All of the 8 offenders had prior records though 3 of the dishonest offenders were the only ones who had been convicted previously of similar offences.

Although 6 of the 8 offenders who were re-convicted had also been given suspended sentences, only in 2 cases were the offenders required to serve their sentences. The amounts of money attached to the recognizances were not estreated from any of the offenders.

The re-conviction rates of offenders discharged on recognizances without probation are relatively low but it is misleading to attribute this phenomenon entirely to the deterrent effect of the sentence. The offenders considered as a group are those convicted of relatively minor crimes and without serious records of criminal behaviour.

RECOGNIZANCES (including cases where sentence mingled with suspended sentence but not with probation)

No.	Offence	Age	Number of Prior Convictions for similar types of offence	Details of Recognizance	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ years	Whether Bond estreated or suspended sentence served.
1.	Stg.	42	Police record not traced	Own recognizance; £100 for period of 3 yrs.	Good behaviour for 3 yrs.	Police record not traced	No
2.	Stg.B/E	19	2	Own recog;£100, for period of 3 yrs.	Good behaviour for 3yrs; 3 mos. s.s.	Nil	No
3.	Indecent Practices	19	Nil	Own recog;£25, for period of 2 yrs.	Good behaviour for 2yrs; Judgment when called upon	Nil	No
4.	Stg.B/E	18	Nil	Own recog;£50, for period of 2 yrs.	Good behaviour for 2yrs; Judgment when called upon	Nil	No
5.	Stg.B/E	24	Nil	Own recog;£100 for period of 2 yrs.	Good behaviour for 2yrs; 3 mos. s.s.	Nil	No
6.	Stg.B/E	21	Nil	Own recog;£50, for period of 2 yrs.	Judgment when called upon	Nil	No
7.	Defilement	21	Nil	Own recog;£25 for period of 2 yrs.	Good behaviour for 2 yrs; 3 mos. s.s.	(1)Attempted unlawful use; larceny; (2)Unlawful use.	No left Tasmania
8.	Defilement	21	Nil	Own recog.£100 for period of 2 yrs.	Good behaviour for 2yrs; 6 mos. s.s.	Nil	No
9.	Wounding	41	Nil	Own recog.£100	Judgment when called upon	Nil	No
10.	Defilement	24	Nil	Surety;£50 for period of 2 yrs.	Good behaviour for 2yrs.	Nil	No
11.	Defilement	23	Nil	Own recog;£50 for period of 2 yrs.	Good behaviour for 2yrs; 3 mos. s.s.	Nil	No
12.	B/E	52	6	Own recog.£100 for period of 2 yrs.	Good behaviour for 2yrs; 6 mos. s.s.	Nil	No



RECOGNIZANCES (continued)

No.	Offence	Age	Number of prior convictions for similar type of offence	Details of Recognizance	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ years	Whether Bond estreated or suspended sentence served
13.	Stg.B/E	17	Nil	Own recog.£25	Judgment when called upon	Nil	No
14.	False Pretences	29	Nil	Own recog.£200 for period of 2 yrs.	Good behaviour for 2 yrs; 12 mos. s.s.	Nil	No
15.	False Pretences	28	Nil	Own recog.£100 for period of 2 yrs.	Good behaviour for 2 yrs; 12 mos. s.s.	Nil	No
16.	Stg.	20	Nil	Surety; £100 for period of 2 yrs.	Judgment when called upon	Nil	No
17.	Stg.B/E	26	Nil	Own recog.£50 for 3yrs.	Good behaviour for 3 yrs; 6 mos. s.s.	Nil	No
18.	Attempted B/E	25	Nil	Own recog.£100 for 2yrs.	Judgment when called upon	Nil	No
19.	Uttering	36	2	Own recog.£100 for 2yrs.	Judgment when called upon	Nil	No
20.	Forgery	32	Nil	Own recog.£100 for 2yrs.	Judgment when called upon	Nil	No
21.	Receiving	31	Nil	Own recog.£50 for 2 yrs.	Good behaviour for 2 yrs; 6 mos. s.s.	Nil	No
22.	Stg/Forgery & Uttering	35	Nil	Own recog.£10 for 12 mos.	Judgment when called upon during period of 12 mos.	Nil	No
23.	Receiving	34	Nil	Own recog.£100 for 2yrs.	Good behaviour for 2 yrs; 6 mos. s.s.	Nil	No
24.	Defilement	22	Nil	Own recog.£25 for 6mos.	Judgment when called upon	(1)Stg; (2)Stg.	No
25.	Stg.B/E	34	1	Own recog.£50 for 3yrs.	Good behaviour for 3yrs; 6 mos. s.s.	(1)Stg,B/E	Yes suspended sentence served
26.	Defilement	24	Nil	Own recog.£100 for 2yrs.	Good behaviour for 2 yrs; 6 mos.s.s; not to associate with complainant	(1)Stg;(2)Stg,F/P; (3)Stg;(4)Damage to property	No

RECOGNIZANCES (continued)

No.	Offence	Age	Number of prior convictions for similar type of offence	Details of Recognizance	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ years	Whether Bond estreated or suspended sentence served
27.	Defilement	22	Nil	Own recog.£100 for 2 yrs.	Good behaviour for 2 yrs; 6 mos.s.s.; not to associate with girl for 2 yrs.	Nil	No
28.	Defilement	21	Nil	Own recog.£25 for 2 yrs.	Good behaviour for 2 yrs; Judgment when called upon	Nil	No
29.	Stg.	31	1	Own recog.£100 for 3 yrs.	Good behaviour for 3 yrs; 9 mos. s.s.	(1)Assault	No
30.	Stg.B/E	25	2	Own recog.£50 for 2 yrs.	Good behaviour for 2 yrs; 6 mos. s.s.	Nil	No
31.	Stg.	25	3	Own recog.£100 for 3 yrs.	Good behaviour for 3 yrs; 9 mos. s.s.	(1)Assault	No
32.	Stg.B/E	22	Nil	Own recog.£50 for 2 yrs.	Good behaviour for 2 yrs; Judgment when called upon; abstain from liquor for 2 yrs.	Nil	No
33.	Stg.B/E	28	1	Own recog.£50 for 3 yrs.	Good behaviour for 3 yrs; 6 mos. s.s.	Nil	No
34.	B/E;Stg.	39	Nil	Own recog.£50 for 3 yrs.	Good behaviour for 3 yrs; 12 mos. s.s.	(1)B/E	Yes sentence served
35.	Assault	31	1	Own recog.£100 for 2 yrs.	Good behaviour for 2 yrs.	Nil	No
36.	Indecent assault, burglary	38	Nil	Own recog.£100 for 3 yrs.	Good behaviour for 3 yrs; Sentence when called upon	Nil	No
37.	Stg;B/E	41	Nil	Surety £100 for 2 yrs.	Good behaviour for 2 yrs; 6 mos. s.s.	Nil	No
38.	Defilement	25	Nil	Own recog.£10 for 6 mos.	Good behaviour for 6 mos.	(1)Being a reputed person, loitering with intent, unlawful possession;(2)B/E,Stg.	No

RECOGNIZANCES (continued)

No.	Offence	Age	Number of prior convictions for similar type of offence	Details of Recognizance	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ years	Whether Bond estreated or suspended sentence served
39.	Arson	29	Nil	Own recog.£100 for 2 yrs.	Good behaviour for 2 yrs, sentence when called on during 2 yrs.	Nil	No
40.	False Pretences	60	Nil	Own recog.£200 for 2 yrs.	Good behaviour for 2 yrs; 9 mos.s.s; assign £200 to victim if required	Nil	No

KEY

Stg. = stealing  
 B/E = breaking and entering  
 s.s. = suspended sentence  
 mos. = months.

TABLE J

Suspended Sentences (without probation or recognizances)

22 offenders in the sample were given suspended sentences which were mingled with neither periods on probation nor recognizances and it is convenient to consider these offenders in a separate category.

Like those discharged on recognizances directly under the Criminal Code, the present group of offenders are generally older than those placed upon probation: only 2 were under the age of 21 years and one of the 2 was detained at the Ashley Boys Home. The other offender under 21 was subsequently reconvicted 4 times during the follow-up period of 2½ years and was the only offender in the whole group who was required to serve his suspended sentence.

Insufficient material was available to permit any type of classification of the home backgrounds from which the present group of offenders came, though there was evidence that the only two who had been in Juvenile Institutions during childhood were the two offenders who were under the age of 21 at the date of conviction in 1961. 7 offenders, or 31.8% of the group were described by the police or probation officers as being heavy drinkers.

12 of the 22 offenders, or 54.5% had no previous convictions for similar offences: the remaining 10 offenders had between 1 and 11 similar convictions before 1961.

Excluding the one offender who was subsequently certified as insane and deported, 6 offenders received further convictions during the following

period. It is interesting to note that 4 of these were first offenders in 1961.

The general impression created by consideration of offenders given suspended sentences without probation or recognizances was that this type of sentence in isolation does not act as a strong deterrent.

SUSPENDED SENTENCES (No recognizance)

No.	Offence	Age	Number of prior convictions for same type of offence	Length of suspended sentence	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ yrs.	Whether suspended sentence served
1.	Receiving	30	Nil	3 mos.	Fine £25; condition of no crime of dishonesty for 3 yrs.	(1) Assault	No
2.	Stg. B/E False Pretences	18	1	6 mos.	Fine £25; good behaviour for 2 yrs.	(1) Illegal use, (2) B/E, Stg. (3) Insufficient means; (4) Stg. (5) Insufficient means	Yes
3.	Stg.	47	2	3 mos.	Fine £30; good behaviour for 2 yrs.	Drive motor vehicle under the influence of liquor	No
4.	Stg.	22	Nil	3 mos.	No crime of dishonesty for 3 yrs.	Nil	No
5.	Unlawfully setting fire to property	27	Nil	12 mos.	No crime of similar nature for 2 yrs; compensation	Nil	No
6.	Stg.	21	1	6 mos.	No crime of dishonesty for 3 yrs.	Nil	No
7.	Receiving	30	1	3 mos.	No crime of dishonesty for 3 yrs.	Nil	No
8.	Stg/House-breaking	36	11	2 years	Condition that offender should be a voluntary patient for 2 yrs at Mental Hospital and to stay there at discretion of medical authorities during a period of 2 yrs. and to be of good behaviour for 2 years.	Certified as insane and subsequently deported.	No
9.	Grievous Bodily harm	35	Nil	6 mos.	No crime of personal violence for 3 yrs.	(1) Drunk & disorderly, assault Police, and resist arrest. (2) Offensive behaviour	No
10.	Stg.	25	Nil	9 mos.	No crime of dishonesty for 3 yrs.	Nil	No

SUSPENDED SENTENCES (continued)

No.	Offence	Age	Number of prior convictions for same type of offence	Length of suspended sentence	Other types of penalty imposed for same offence	Subsequent record during follow-up period of 2½ yrs.	Whether suspended sentence served
11.	Receiving	32	Nil	2 mos.	No crime of dishonesty for 2 yrs.	Nil	No
12.	False Pretences	34	Nil	3 mos.	Good behaviour for 3 yrs.	Nil	No
13.	Receiving	42	7	4 mos.	No crime of dishonesty for 3 yrs.	Nil	No
14.	Stg.	38	Nil	3 mos.	No crime of dishonesty for 3 yrs.	(1) Assault police, resist arrest & damage to property	No
15.	Stg.B/E	55	1	6 mos.	Good behaviour for 3 yrs.	Nil	No
16.	Receiving	28	Nil	6 mos.	Good behaviour for 2 yrs.	Nil	No
17.	Stg.B/E	17	7	9 mos.	Recommendation that offender should be detained at the Ashley Boys Home	Nil	No
18.	Indecency	41	9	12 mos.	No crime of indecency or of other offence of sexual nature for 3 yrs.	Nil	No
19.	Assault	46	Nil	3 mos.	No offence involving personal violence for 3 yrs.	Nil	No
20.	Defilement	32	Nil	3 mos.	No offence of sexual nature for 3 yrs.	Nil	No
21.	Stg.B/E	35	Nil	6 mos.	No crime of dishonesty for 3 yrs.	(1) B/E	No
22.	Stg.	22	1	3 mos.	No crime of dishonesty for 3 yrs.	Nil	No

KEY

Stg. = stealing  
 B/E = breaking and entering  
 mos. = months

TABLE K

Imprisonment.

Considerably more personal information was available in respect of those offenders in the sample who were sentenced to imprisonment than the other offenders and the material recorded on the Prison files will therefore be considered before discussing the actual sentences which were imposed.

From the sample, 145 offenders including one woman, were sentenced to imprisonment for varying terms and in most cases information was recorded as to their countries of origin, their religious affiliations, educational attainments and matters concerning health.

(a) Country of origin

Table L below shows the birth places of the inhabitants of Tasmania at the 1961 census and the birth places of those committed by the Supreme Court to gaol during that year:-



Parent Population in 1961*		Those Committed to Prison by the Supreme Court in 1961.	
		Tasmanian	Male 117
			Female 1
		Other Australasian	Male 18
			Female -
All Australasian		All Australasian	
	Male 159,672		Male 135
	Female 158,998		Female 1
European		European	
	Male 16,941		Male 9
	Female 12,904		Female -
Asian		Asian	
	Male 576		Male -
	Female 437		Female -
African		African	
	Male 192		Male -
	Female 186		Female -
American		American	
	Male 190		Male -
	Female. 139		Female -
Other		Other	
	Male 57		Male -
	Female 48		Female -
TOTALS			145

TABLE L

\*Residents of Local Government areas and non-municipal towns (750 persons or more) Tasmania census 1961 (exclusive of full-blood aboriginals) as per Census of the Commonwealth of Australia 30th June 1961, Volume VI, Tasmania.

The parent population in 1961 consisted of 90.98% Australasians,

8.53% Europeans, 0.28% Asians, 0.1% Africans, .09% Americans and .02% of the population were not classified under any of the categories mentioned. Although the criminal sample was small, a similar pattern was evident; there were 93.8% Australasians, the vast majority of whom were Tasmanians, and 6.2% Europeans. The 9 Europeans consisted of 2 offenders from England, 2 from Germany, 2 from Italy, 1 from Poland, 1 from Hungary and 1 from Holland. Although considerable publicity is given to offences committed by New Australians, there is no indication that they are responsible for an undue proportion of crimes.

(b) Religion

A comparison of the proportions in the parent population of people belonging to each religious denomination with the proportions in the sample of the criminal population led to some interesting results:-

Religious Denomination	<u>Parent Population</u>		<u>Criminal Population</u>	
	No. in each Denomination *	Percentage in each Denomination	No. in each Denomination	Percentage in each Denomination
Baptist	7,227	2.06	-	-
Brethren	2,008	.57	-	-
Roman Catholic (inc. "Catholic")	63,993	18.27	49	33.79
Church of Christ	2,507	.72	2	1.38
Church of England	159,101	45.41	72	49.64
Congregational	4,193	1.19	-	-
Greek Orthodox	1,009	.29	-	-
Lutheran	1,555	.44	-	-
Methodist	42,236	12.06	4	2.76
Presbyterian	16,757	4.78	5	3.46
Salvation Army	2,316	.66	3	2.07
Seventh Day Adventist	1,567	.45	-	-
Protestant (Undefined)	1,975	.57	1	.69
Other Christian	5,090	1.45	1	.69
Non-Christian	268	.08	1	.69
Indefinite	1,766	.5	-	-
No Religion	775	.22	4	2.76
No information	35,997	10.28	3	2.07
TOTALS	350,340	100.00%	145	100.00%

TABLE M

\*Residents of Local Government areas and non-municipal towns (750 persons or more) exclusive of full-blood aboriginals as per Census of Commonwealth of Australia, 30th June 1961, Volume VI, Tasmania.

Although the sample is small and the religious affiliations of the prisoners tend to oscilate to a great extent, the high incidence of Roman Catholicism amongst the criminals is a noteworthy feature of Table M. Perhaps more than any other denomination, the practices of the Roman Catholic Church are open to abuse: the liberty of frequent confession and the expiation of sins may be interpreted as licence to repeat anti-social conduct or criminal behaviour on the assumption that absolution will always follow. Similar findings have been made in other parts of the world: in Germany, Holland, Britain and America, Roman Catholics have been found to have a higher crime rate than Protestants<sup>(1)</sup>. Dr. Howard Jones urges that in the countries studied, Roman Catholics are exposed to comparative poverty and unsatisfactory environmental conditions and these factors are of greater significance than the practice of confession. However, this observation does not seem justified with reference to Australia, a country of financial prosperity and a country in which there is relatively little difference between the sizes of Roman Catholic and non-Roman Catholic families.

At the other end of the scale, it might be anticipated that the criminal population wouls include an undue proportion of those belonging to the Salvation Army, which is essentially a Mission to social outcasts and to alcoholics. However, the sample is too small to do more than indicate this hypothesis may be correct.

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(1) "Crime and the Penal System" Howard Jones 1956, 2nd Ed. University Tutorial Press Ltd. at p. 70.

Education

All over the world, a great majority of prisoners have been found of inferior intelligence. In many cases, a poor environment and a low degree of innate ability aggravate each other and both factors contribute to an absence of scholastic achievements. All prisoners, on being received into Risdon Gaol, are interviewed by the Education Officer and a record is made of the educational standard attained. Table N below indicates that at the commencement of their terms of imprisonment, the majority of prisoners have only a poor standard of educational achievements.

<u>Standard Attained</u>	<u>Number of Offenders</u>
Illiterate	5
Read and write only	12
Below Grade 9*	85
Grade 9	27
Technical School	10
University	1
No information	5
TOTAL	145

TABLE N

\*In Grade 9, the lowest public examination, known as the Secondary School Certificate, is taken. Candidates for this examination generally come from Area Schools rather than High Schools, and are not considered suitable for further studies. Children who take the Examination usually do so between the ages of 14 and 16 years.

Health

All prisoners received into Risdon Gaol are examined by the Medical Officer soon after arrival, and in most cases, a note of his findings is made on the respective files. The physical health of the prisoners included in the sample was recorded as follows:-

<u>Physical Health</u>	<u>Number of Offenders</u>
Fit	85
Disabled	7
Poor Health	2
No information	<u>51</u>
TOTAL	<u>145</u>

TABLE O.

If any of the 51 offenders, of whom no information could be traced, had been suffering from a severe handicap or illness, undoubtedly some reference to it would have been made on the file. Thus it appears that the vast majority of prisoners were physically fit on arrival at Risdon.

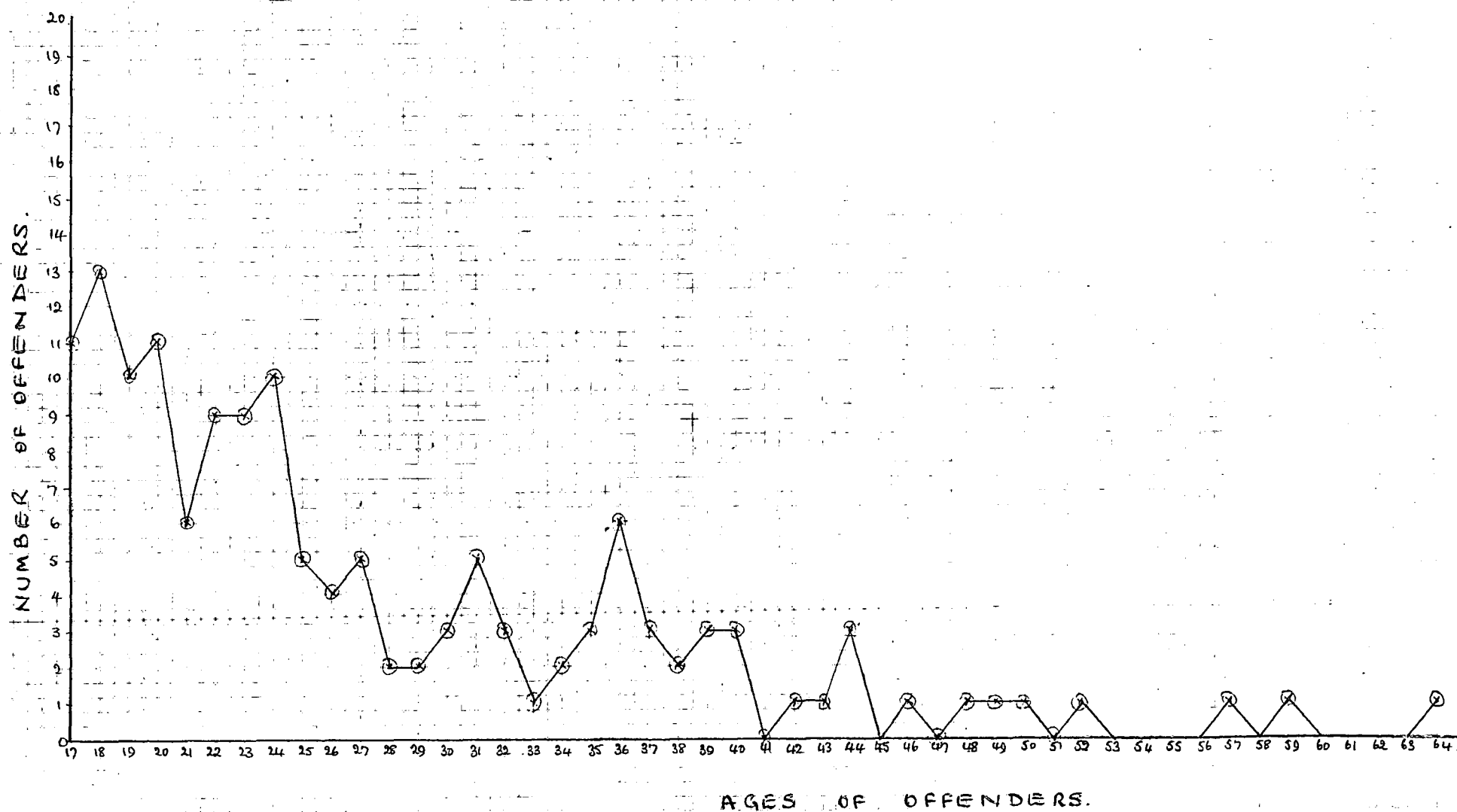
Relatively few of the prisoners are examined by a psychologist or a psychiatrist, for such examination is usually made only of those serving sentences under the Indeterminate Sentences Act 1921 and any prisoners who appear to be suffering from a marked personality disorder or mental disease. A total number of 15 prisoners in the sample were diagnosed by a psychiatrist as having personality or mental abnormalities 8 of these

were described as being inadequate or immature, 2 had been certified as mental defectives, and one had been a certified moral defective under the terms of the Mental Deficiency Act 1920 which was repealed by the Mental Health Act 1963. 3 were diagnosed as psychopathic personalities and 1 had been examined by various psychiatrists, some of whom pronounced he was a schizophrenic and some of whom declared he was normal.

Although controversy of this kind is quite common regarding the nature of mental disease, the general prejudice against psychology and psychiatry is quite unjustified. Both sciences are still in their infancy, but nevertheless they can make a valuable contribution to the war against crime. All prisoners should be given certain tests upon being committed to prison. In the field of psychology, batteries of tests have evolved recently as a means of giving the most complete picture of an individual. These include tests designed to produce an assessment of general intelligence and the mastery of specific skills, there are also personality tests which reveal such factors as extroversion and introversion. Still further tests are designed to show the presence or absence of anxiety states. All these tests have been standardised to enable a qualitative and quantitative study of human behaviour.

Psychology does not promise to give us all the answers but in many cases, it can at least define the area of abnormality. Unless we take full advantage of the discipline in our study of criminal behaviour

GRAPH SHOWING AGE DISTRIBUTION OF OFFENDERS IN THE  
SAMPLE WHO WERE SENTENCED TO IMPRISONMENT.





we are denying ourselves the benefit of progress.

Age.

The age distribution of those committed to prison is shown on the graph below. The median age of the 145 prisoners included in the sample was 24 years. 45 of them or 31% were under the age of 21 in 1961 and 83 or 57.2% were under the age of 25 years. These percentages are undesirably high but reflect the dilemma of the Courts produced by the lack of suitable alternative methods of treatment.

It is interesting to consider two other features in the light of the age distribution of the prisoners:- the number who had been in Juvenile Institutions and the incidence of heavy drinking among those included in the sample.

Juvenile Institutions Table P below shows the numbers and proportion of prisoners belonging to each age group who had spent some period of childhood in Juvenile Institutions:-

Age Group	Total Number of Prisoners	Number who had been in Juvenile Institutions	Percentage who had been in Juvenile Institutions
Up to 21	51	29	56.9%
22 - 29	46	14	30.4%
30 - 37	25	5	20.0%
38 - 45	14	5	35.7%
Over 46	9	2	22.2%
TOTALS	145	55	

TABLE P

It will be observed that over half of the prisoners aged 21 years and under had been in Institutions as children, which appears to be a factor rendering them less suitable for probation. Undoubtedly the distribution shown in Table P partly reflects changes in policy of the Department of Social Welfare over a period of years; it may also reflect the management of the particular Institutions. It is interesting to note, however, that the 2 age groups in which the greatest proportions of prisoners have been in Institutions correspond with the ages of children brought up in the first and second world wars respectively.

Heavy Drinkers There is a similar pattern among those committed to prison as shown on Table C (ante) which concerned all the offenders in the sample:-

Age Group	Total number of Prisoners	Number of Heavy Drinkers	Percentage of Heavy Drinkers
Up to 21	51	7	13.7%
22 - 29	46	15	32.6%
30 - 37	25	15	60.0%
38 - 45	14	7	50.0%
Over 46	9	3	33.0%
TOTALS	145	47	

TABLE Q.

Most of the offenders in the upper age groups having heavy drinking habits were committed to prison. In view of this situation it is highly desirable that there should be a greater liaison between such organisations as Alcoholics Anonymous and the Department of Prisons.

### Sentences

A considerable number of prisoners included in the sample were convicted of crimes contained in more than one indictment. In such cases, it was quite common for the Court to pass one sentence to cover all the charges or to cause a gaol sentence to run concurrently with a term previously imposed.

There were, however, 148 separate and distinct sentences passed upon the offenders in the sample and the lengths of the respective terms were as follows:-

<u>Length of Sentence</u>	<u>Number of Offenders Sentenced</u>
6 months and under	52
Over 6 months to 12 months	37
15 months	3
18 months	17
24 months	7
26 months	1
30 months	2
36 months	6
37 months	1
48 months	2
60 months	1
Carried forward	129

<u>Length of Sentence</u>	<u>Number of Offenders Sentenced</u>
Brought/fwd	129
72 months	1
84 months	1
Life	2
Indeterminate	<u>15</u>
Total	<u>148</u>

TABLE R.Sentences not exceeding 12 months.

As a great majority of the prisoners were sentenced to terms not exceeding one year, it is of some interest to consider them in further detail. Table S shows the age distribution of prisoners receiving sentences of 12 months and less and the crimes for which they were convicted:-

<u>Length of Sentence</u>	<u>Age Group</u>	<u>Total No. of Prisoners</u>	<u>Dis- honesty</u>	<u>Violence</u>	<u>sex</u>	<u>Arson</u>	<u>Escape</u>
6 months and under	Up to 21	20	19	-	1	-	-
	22 - 29	16	13	-	3	-	-
	30 - 37	8	7	-	-	-	1
	38 -45	5	5	-	-	-	-
	Over 46	3	3	-	-	-	-
Totals		52	47	-	4	-	1

Length of Sentence	Age Group	Total No. of Prisoners	Dis-honesty	Violence	Sex	Arson	Escape
Over 6 months and under 12 months	Up to 21	14	12	1	1	-	-
	22 - 29	11	10	1	-	-	-
	30 - 37	7	5	1*	1	-	-
	38 - 45	2	2	-	-	-	-
	Over 46	3	2	-	1	-	-
Totals		37	31	3	3	-	-

TABLE S.

\*Offender also convicted of arson.

It has already been observed that it is misleading to attach a great deal of importance to reconviction rates in assessing the effect of particular forms of treatment<sup>(1)</sup>. However, a consideration of previous and subsequent records and gaol sentences does give a prima facie indication of the situation and Table T. below permits a comparison between those sentenced for periods of 6 months and less and those sentenced to imprisonment for terms exceeding 6 months and under 12 months:-

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(1) See ante p.153.

194.

Length of Sentence	Age Groups	Total No. of Prisoners	No. with prior similar convictions	No. having served prior Gaol sentences	Percentage having served prior Gaol sentences	No. with subsequent similar convictions*	No. with subsequent Gaol sentences	Percentage with subsequent Gaol sentences.
6 months and over	Up to 21	20	18	5	25%	13	13	65.0%
	22 to 29	16	10	8	50.0%	3	6	37.5%
	30 to 37	8	6	7	87.5%	5	7	87.5%
	38 to 45	5	5	5	100.0%	3	4	80.0%
	Over 46	3	3	1	33.3%	0	0	0.0%
Totals		52	42	26		24	30	
Over 6 months and under 12 months	Up to 21	14	12	9	64.3%	8	8	57.1%
	22 to 29	11	11	8	72.7%	4	6	54.5%
	30 to 37	7	4	2	28.6%	2	2	28.6%
	38 to 45	2	2	1	50.0%	0	1	50.0%
	Over 46	3	1	1	33.3%	0	0	0.0%
Totals		37	30	21		14	17	

TABLE T.

\*There was a follow-up period of 2½ years from the dates of the 1961 convictions.

A feature of particular interest which is revealed by the comparison, is the percentage of offenders aged 21 years and less who were sentenced in 1961 to periods of imprisonment not exceeding 12 months and were subsequently imprisoned again. In every other group of offenders, the percentage receiving subsequent gaol sentences did not exceed the percentage having served prior gaol sentences. This finding suggests that short-term sentences are particularly detrimental to younger offenders.

Definite Sentences exceeding 12 months.

It is not practicable to consider the reconviction rates of those offenders in the sample who were sentenced to periods of imprisonment exceeding 12 months because of the relatively short time which has passed since the expiration of their respective sentences, and a few sentences are in fact still current. However, it is possible to tabulate certain other characteristics of those sentenced to definite terms of imprisonment exceeding 12 months. Table U. below shows the types of crime for which they were sentenced and bracketed figures indicate that the offender is also classified under another type of offence.

Length of Sentence	Total No. of offenders	Dis-honesty	Violence	Sex	Arson	Escape
15 months	3	3	-	-	-	-
18 months	17	17	-	-	-	(1)
24 months	7	7	(3)	-	-	-
26 months	1	1	-	-	-	-
30 months	2	2	(1)	-	-	-
36 months	6	4	1	1	-	-
37 months	1	1	-	-	-	-
48 months	2	-	-	2	-	-
60 months	1	-	1	-	-	-
72 months	1	-	1	-	-	-
84 months	1	-	-	1	-	-
Life	1	-	2	-	-	-
Totals	44	35	5	4	-	-

TABLE U.Indeterminate Sentences

15 offenders in the sample all of whom were convicted of crimes of dishonesty, were sentenced under the terms of the Indeterminate Sentences Act 1921. In 6 of these cases, the sentencing Court imposed a definite term which was to be served before the commencement of the sentence under the Indeterminate Sentences Act 1921. It is submitted that this practice is quite inconsistent with the principle of indeterminate sentencing that the offender should be released upon evidence of reformation of character.

9 offenders were under the age of 21, three of whom had not served



prior sentences of imprisonment although they had been in Juvenile Institutions during childhood. Altogether 9 offenders sentenced under the Indeterminate Sentences Act 1921 had spent some period of their lives in Juvenile Institutions.

Generally, the older offenders who were sentenced under the Act had long histories of criminal convictions.

Owing to the fact that in almost every case, the offenders were serving definite sentences as well as indeterminate sentences, it was impossible to ascertain the exact lengths of time served indeterminately. However, in October 1964, all those, except one, who had been sentenced under the Indeterminate Sentences Act 1921 in 1961, had been at large in the community for at least some time, though 6 had received subsequent gaol sentences whilst released on licence.

Generally it appears that the offenders sentenced under the Act are released after serving relatively short terms. If improved and separate reformatory treatment were available for indeterminate prisoners, longer periods of training in prison would probably result in fewer reconvictions after release.

### Parole

Only 17 offenders in the sample were released from prison on parole, all of whom completed their terms satisfactorily. 2 received minor convictions while released on parole but in neither case were the offenders returned to prison.

The periods for which the offenders were paroled were extremely short; 4 were on parole for less than 3 months, 8 were on parole for periods exceeding 3 months but not exceeding 6 months, and 5 were on parole for periods exceeding 6 months but not exceeding 12 months. This situation exists because sentences in Tasmania are generally so short and parole only runs until the time when the gaol sentence would have expired if the offender had remained in prison.

From a psychological aspect, the system of releasing prisoners on parole is altogether sound. It is a privilege which is conferred upon a prisoner as a recognition of his good work and conduct in prison. At the same time, it offers a measure of supervision and support when the prisoner is released. It is desirable that far more prisoners should be released on parole but an extension of the system is dependent upon the Courts imposing longer sentences upon those for whom there is no suitable alternative to imprisonment.

### 3. Sentencing Patterns.

In selecting a sample of sentences which relate to human beings who are different from one another in many respects, save that they have all been convicted by the Supreme Court for offences of dishonesty, one would hardly expect to find that all first offenders received one sort of treatment while all those with more than 6 prior offences were sentenced to identical terms of imprisonment.

If such a pattern emerged, it would indicate that injustice had been done rather than justice, for mitigating circumstances always vary from case to case.

However, if the same criteria are being applied by judges in selecting sentences, it is probable that a general pattern will emerge which will reflect a discernible policy. Such a policy would represent shared experiences and follow-up studies of offenders who have been subjected to the various correctional processes in the past.

Table V below relates to those offenders who were included in the 1961 sample and who were sentenced for committing crimes of dishonesty by the Supreme Court. Twenty-three offenders appeared before the Court twice or more, sometimes before the same judge and sometimes before different judges. In all these cases the sentences are shown separately.

Certain omissions had to be made from the original sample as in very few cases it was impossible to trace the judges before whom the offenders had appeared. Also one case has been omitted because the offender successfully appealed against the sentence imposed upon him by the Supreme Court.

Where concurrent sentences were imposed in respect of several charges in the same indictment, the length of the term shown is the concurrent term itself. Where cumulative sentences were imposed, these have been added together according to the number of charges upon which

the offenders were found guilty.

In the table, distinct patterns emerge between the different sentences imposed by the same judge rather than a pattern which is common to all of them.

Of particular interest are the following features:-

- (1) The average lengths of the fixed terms of imprisonment of the different judges show a wide variation:-

Judge A: 12-34 months

Judge B: 6-69 months

Judge C: 12-17 months

Judge D: 10-2 months

Judge E: 14-31 months.

- (2) The relatively infrequent use by all judges of the 3 months sentence, except by Judge B.

Of the 42 offenders sentenced to fixed terms of imprisonment, Judge B sentenced 19 offenders to terms of 3 months or less.

Neither Judge C nor Judge E used sentences of 3 months or under, Judge E imposed one sentence of 4 months and Judge C imposed nothing less than 6 months.

- (3) Judge B frequently suspended terms of imprisonment on condition that the offenders should commit no crime of dishonesty. This condition was also used on 4 occasions by Judge D but not by the other Judges at all.

- (4) The amounts specified in the recognizances of Judge A are much higher than the amounts specified by the other Judges. In all cases save 3, the amounts specified by Judge A are either £100 or £200.
- (5) The proportions between the custodial and the non-custodial sentences imposed by the Judges shows a substantial variation. This may be due in part to the higher proportion of first offenders coming before some Judges, Particularly Judge C.

	<u>Judge A</u>	<u>Judge B</u>	<u>Judge C</u>	<u>Judge D</u>	<u>Judge E</u>
No. of non-custodial sentences	33	23	29	12	15
No. of custodial sentences	35	45	20	14	28
	<u>68</u>	<u>68</u>	<u>49</u>	<u>26</u>	<u>43</u>

TABLE W

- (6) Of those sentenced to non-custodial sentences, there was by no means equal use of the Probation Service:-

	<u>Judge A</u>	<u>Judge B</u>	<u>Judge C</u>	<u>Judge D</u>	<u>Judge E</u>
No. placed on Probation	15	9	18	9	11
No. not placed on Probation	18	14	11	3	4
	<u>33</u>	<u>23</u>	<u>29</u>	<u>12</u>	<u>15</u>

TABLE X.

The ages of those offenders receiving non-custodial sentences who were not placed on probation were as follows:-

	<u>Judge A</u>	<u>Judge B</u>	<u>Judge C</u>	<u>Judge D</u>	<u>Judge E</u>
Offenders under 25	4	4	6	1	1*
Offenders 25 or over	14	10	5	2	3
	<u>18</u>	<u>14</u>	<u>11</u>	<u>3</u>	<u>4</u>

TABLE Y.

\* Judge recommended that the offender should be detained at the Ashley Home.

Generally, it appears that there is not a great deal of concensus of opinion between all the Judges with regard to sentencing, and the discrepancies are such that they are unlikely to be detected by appeal. An offender may prefer to be imprisoned for a short-term rather than be exposed to non-custodial treatment which may include a lengthy period of supervision as well as a recognizance, a fine and possibly an order for restitution. However the chances of reconviction following a short gaol sentence appear much greater than the chances following probation. The lack of common policy between the Judges indicates that a great deal could be gained by the introduction of State-wide and Commonwealth-wide Conferences. <sup>(1)</sup>

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<sup>(1)</sup> See post p. 241

SUPREME COURT CONVICTIONS FOR DISHONESTY (1961)

ABBREVIATIONS

s.s.	=	suspended sentence	resttn.	=	restitution
imp.	=	imprisonment	I.S.A.	=	Indeterminate Sentences Act
recog.	=	recognizance	P.O.	=	Probation Officer
G.B.	=	Good behaviour	O.D.	=	obey directions
J.C.U.	=	Judgment when called upon	N.S.D.	=	No crime of serious dishonesty
O.R.	=	Own recognizance	A.L.	=	Abstain from liquor
N.C.D.	=	No crime of dishonesty			

N.B. Age of offender is shown in brackets.

FIRST OFFENDERSJUDGE A

1. 6mos.s.s/  
G.B.2yrs. (28)
2. 6mos. imp. (21)
3. Recog.£100.O.R.  
for 2yrs/J.C.U.  
(25)
4. Recog.£200 O.R.  
for 2yrs/J.C.U/  
Probation 2yrs  
& resttn.ordered  
by P.O. (18)
5. 9mos.s.s/G.B.2  
yrs/Recog.£200  
O.R/£200 compen-  
sation to victim  
if desired. (60)
6. 6mos.s.s/G.B.2  
yrs/Recog.£100 O.  
R/Probation 2yrs.  
(17)
7. Recog.£50 O.R/  
G.B.2yrs/J.C.U.  
(18)
8. Recog.£100 O.R/  
G.B.2yrs/J.C.U.  
(32)
9. Recog.£100 O.R.&  
Surety for 2yrs/  
J.C.U. (20)
10. 4mos. imp. (23)
11. 6mos.s.s/G.B.2  
yrs/Recog.£100  
with Surety (41)

JUDGE B

1. 3mos.s.s/G.B.3yrs.  
(34)
2. Recog.£10 O.R/J.C.U.  
within 12mos. (35)
3. 2mos.s.s/N.C.D. for  
2 yrs. (32)
4. Recog.£25 O.R/G.B.2  
yrs/J.C.U/Probation  
for 2yrs.Resttn.of  
£6 per fortnight (23)
5. Recog.£25 O.R/G.B.2  
yrs/J.C.U/Probation  
for 2yrs. (19)
6. 9mos.s.s/N.C.D.for  
3yrs. (25)
7. 3mos.s.s/N.C.D.for  
3yrs. (22)
8. Fine £50 (64)
9. Recog.£100 O.R./G.B.  
for 3yrs. (42)
10. 3mos.imp. (24)
11. 3mos.imp. (19)
12. 3mos.s.s/N.C.D. for  
3yrs. (38)

JUDGE C

1. Recog.£25 O.R/J.C.U/  
G.B.2yrs/Probation  
for 2yrs. (17)
2. Recog.£25 O.R/J.C.U/  
G.B.2yrs/Probation for  
2yrs. (19)
3. Recog.£50 O.R/J.C.U/  
G.B.3yrs/Probation  
for 3yrs. (23)
4. 3mos.s.s/Recog.£25  
O.R/G.B.2yrs/Probation  
for 2yrs. (18)
5. Recog.£50 O.R/J.C.U./  
G.B.3yrs/Probation  
for 3yrs. (30)
6. Recog.£50 O.R/J.C.U.  
(21)
7. Recog.£100 O.R/J.C.U/  
G.B.3yrs. (38)
8. Recog.£25 O.R/J.C.U/  
G.B.2yrs/Probation for  
2yrs. (22)
9. Fine £25 (24)
10. Recog.£25 O.R/J.C.U.  
(17)
11. 6mos.s.s/G.B.2yrs/  
Recog.£50 O.R. (31)

JUDGE D

1. 12mos. imp. (59)
2. 6mos.s.s/N.C.D.2yrs/  
Recog.£50 O.R/G.B.2  
yrs/Probation for 2  
yrs. (17)
3. 3mos.s.s/G.B.2yrs/  
Recog.£100 O.R. (24)
4. 3mos.s.s/N.C.D.3yrs/  
Fine £25 to be pd.in  
one month. (30)
5. 6mos. imp. (26)

JUDGE E

1. 6mos.s.s/G.B.3yrs/Recog.  
£50 O.R. (26)
2. 18mos.imp. with recommend-  
ation for parole after  
9mos. (31)
3. 9mos.imp. (31)
4. 9mos.imp. (21)
5. 3yrs.imp. (43)
6. 6mos.s.s/G.B.3yrs/Recog.  
£50 O.R/Probation for  
3yrs. (17)
7. Recog.£50 O.R.& Surety/  
Probation for 3yrs and obey  
his directions about living  
area. (17)



FIRST OFFENDERS (continued)

<u>JUDGE A</u>	<u>JUDGE B</u>	<u>JUDGE C</u>	<u>JUDGE D</u>	<u>JUDGE E</u>
12. 6mos.s.s/G.B.2 yrs/Recog.f100 O.R/Probation for 2yrs. (18)				
13. 12mos.s.s/G.B.2yrs/ Recog.f200 O.R. (29)				
14. 12mos.s.s/G.B.2yrs/ Recog.f100 O.R. (28)				
15. 6mos.s.s/G.B.2yrs/ Recog.f100 O.R. (34)				
16. 3yrs.imp. (36)				

POLICE RECORD FOR OFFENCE OTHER THAN DISHONESTY

1. 6mos.s.s/Recog.f100 O.R/Probation for 2yrs. (19)	1. 3mos.imp. (32)	1. 12mos.s.s/G.B.2yrs/ Recog.f100 with Surety/Probation for 2yrs/Obey directions of P.O. (29)	1. 9mos.s.s/G.B.3yrs/ Resttn within 6mos/Recog. £25 O.R/Probation for 3 yrs. and obey directions of P.O. (33)
2. 6mos.imp. (25)	2. 6mos.s.s/N.C.D. for 3yrs. (35)	2. 12mos.s.s/G.B.3yrs/ Recog.f50 O.R. (39)	
	3. 3mos.s.s/N.C.D. for 3yrs. (19)	3. Recog.f50 O.R/J.C.U. within 2yrs. (22)	
	4. Recog.f25 O.R/G.B. 12mos/J.C.U/Probation for 12mos.(18)	4. 12mos. imp. (30)	
		5. 9mos.s.s/G.B.3yrs/ Recog.f50 O.R/Probation for 3yrs. (36)	

ONE PREVIOUS OFFENCE OF DISHONESTY

<u>JUDGE A</u>	<u>JUDGE B</u>	<u>JUDGE C</u>	<u>JUDGE D</u>	<u>JUDGE E</u>
1. 12mos.imp.and resttn.of £30 (28)	1. 12mos.imp (34)	1. I.S.A. (18)	1. 6mos.s.s/N.C.D 2 yrs/Recog.£100 O.R/ G.B.2yrs/Probation for 2yrs and obey P. O's directions concer- ning psychiatric treat- ment. (17)	1. 3mos.s.s/G.B.3yrs.(55)
2. 9mos.s.s/G.B.2yrs/ Recog.£100 O.R/Pro- bation for 2yrs.& obey directions of P.O. as to resttn. (18)	2. 6mos.s.s/N.C.D for 3 yrs. (30)	2. Recog.£50 O.R/G.B.2 yrs/Probation for 2 yrs. (19)	2. 12mos.s.s/G.B.2yrs/ Recog.£100 with Surety/ Probation for 2yrs & obey P.O's directions (20)	2. 3mos.s.s/G.B.3yrs/ Recog.£25 O.R/Probation for 2yrs. (22)
3. 6mos.s.s/G.B.2yrs/ Recog.£100 with Surety/Probation for 2yrs.& obey direct- ions as to resttn. (25)	3. 6mos.s.s/N.C.D. for 3 yrs. (21)	3. Recog.£25 O.R/J.C.U/ G.B.2yrs/Probation for 2yrs. (21)	3. 12mos.s.s/Recog.£100 with surety/G.B.2yrs/ Probation for 2yrs.(21)	3. 9mos.s.s/G.B.3yrs/ Recog.£50 with Surety/ Probation for 3yrs.(18)
4. 9mos.s.s/G.B.3yrs/ Recog.£100 3yrs. (31)	4. 3mos. imp. (18)	4. 12mos. imp. (39)		4. 15mos. (22)
5. Recog.£50 O.R/G.B. 2yrs/J.C.U/Probat- ion for 2yrs. (18)	5. 3mos. imp. (19)	5. 6mos.s.s/G.B.2yrs/ Fine £25 to be pd in 6wks otherwise 4wks in gaol. (18)		5. 6mos. (49)
6. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/Prob- ation for 2yrs.(17)	6. Recog.£25 O.R/G.B.3 yrs/Probation for 3 yrs. (22)	6. 6mos.s.s/G.B.3yrs/ Recog.£50 O.R/G.B.3 yrs. Probation for 3 yrs. (19)		6. Fine £40 to be pd in 14days /8mos.s.s/G.B. 3yrs/Recog.£40 O.R/on Probation for 3yrs & resttn.as directed by P.O. (20)
7. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/Prob- ation for 2yrs.(21)	7. Recog.£50 with surety/ G.B.2yrs/J.C.U/Probat- ion for 2yrs. (19)	7. 6mos.s.s/G.B.3yrs/ Recog.£50 with Surety (28)		
	8. Recog.£25 with surety/ G.B.12mos/J.C.U/Proba- tion for 12mos. (17)	8. 12mos.s.s/G.B.3yrs/ Recog.£25 O.R/Proba- tion for 3yrs. (19)		
	9. Recog.£25 O.R/G.B.2yrs/ J.C.U/Probation for 2yrs. (20)	9. 6mos.s.s/G.B.3yrs/ Recog.£50 O.R. (34)		
	10. 3mos.s.s/N.C.D for 3 yrs. (22)	10. 6mos.imp. (24)		
	11. 2mos. imp. (24)			

TWO PREVIOUS OFFENCES OF DISHONESTY

<u>JUDGE A</u>	<u>JUDGE B</u>	<u>JUDGE C</u>	<u>JUDGE D</u>	<u>JUDGE E</u>
1. 4mos.imp. (22)	1. 14mos.imp. (34)	1. Fine £25. 1month to pay. (21)	1. 12mos.s.s/G.B.2yrs/ Recog.£100 with surety/Probation for 2yrs & obey directions of P.O. (23)	1. Fine £30 to be pd within 1month/3mos.s.s/G.B. 2yrs. (49)
2. 12mos.imp. (23)	2. 3mos.imp. (23)	2. Recog.£50 O.R/J.C.U/ G.B.3yrs/Probation for 3yrs. (30)	2. 18mos.with recommendation for parole after 9mos. (20)	2. Fine £50 to be pd within 14dys/10mos.s.s/G.B.3yrs/ Recog.£50 O.R/Probation for 3yrs & obey P.O's directions re resttn. (19)
3. 6mos.s.s/G.B.2yrs/ Bond £50 O.R. (25)	3. 30days s.s/G.B.1yr/ Probation for 1yr. (47)	3. 12mos.s.s/G.B.3yrs/ Recog.£50 O.R/Probation for 3yrs. (20)	3. Fine £25 and pay damage (41)	3. 2yrs imp. (31)
4. 6mos.imp. (40)	4. 15mos.imp. (19)	4. 6mos.imp. (18)	4. 2yrs.6mos.imp. (17)	4. 6mos.s.s/G.B.2yrs/Probation for 2yrs & condition as to living area. (18)
5. Recog.£100 O.R/G.B. 2yrs.J.C.U. (36)	5. Recog.£25 O.R/J.C.U/ G.B.2yrs/Probation for 2yrs. (17)	5. 4mos.s.s/G.B.2yrs/ Recog.£25 O.R/Probation for 2yrs. (18)	5. 6mos.s.s/G.B.2yrs/ Recog.£50 O.R/Probation for 2yrs. (18)	5. 2yrs.imp. (22)
6. 12mos.imp. (19)				
7. 3mos.s.s/G.B.2yrs/ Recog.£100 O.R. (19)				

THREE TO SIX PREVIOUS OFFENCES OF DISHONESTY

1. 4mos.imp. (18)	1. 3mos.imp. (17)	1. 6mos.s.s/G.B.3yrs/ Probation for 3yrs. (29)	1. 12mos.s.s/G.B.2yrs/ Recog.£50 O.R/Probation for 2yrs & obey P.O's directions as to psychiatric treatment. (18)	1. 12mos.imp. (17)
2. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/Probation for 2yrs. (18)	2. 4mos.imp. (36)	2. 9mos.imp. (37)	2. 3mos.imp. (30)	2. 3½ yrs then I.S.A. (17)
3. 12mos.imp. (45)	3. 3mos.imp. (36)	3. Recog.£50 with surety/ J.C.U/G.B.3yrs/Probation for 3yrs. (17)	3. 6mos.s.s/G.B.3yrs/ Recog.£50 O.R.with surety/Probation for 3yrs. (17)	3. 12mos.imp. (17)
4. 6mos.imp. (17)	4. 3mos.imp. (17)	4. 12mos.imp. (22)		4. 9mos.imp. (23)
5. 3mos.imp. (21)	5. 9mos.imp. (20)	5. Recog.£50/G.B.3yrs/ Probation for 3yrs. (17)		5. 6mos.imp. (46)
6. 9mos.s.s/G.B.3yrs/ Recog.£100 O.R. (25)	6. 6mos.imp. (18)	6. I.S.A. (17)		6. I.S.A.concurrent with 3mos.imp. (18)
7. 18mos.imp. (30)	7. 3mos.imp. (20)			7. 3yrs imp. (27)
	8. 6mos.imp. (18)			8. 9mos.s.s/G.B.3yrs/Probation for 3yrs. (20)
	9. 3mos.imp. (29)			

THREE TO SIX PREVIOUS OFFENCES OF DISHONESTY (continued)

<u>JUDGE A</u>	<u>JUDGE B</u>	<u>JUDGE C</u>	<u>JUDGE D</u>	<u>JUDGE E</u>
8. 9mos.imp. (19)	10. 4mos.imp. (31)	7. I.S.A. (18)	4. 6mos.imp. (17)	9. 4mos.imp. (31)
9. 12mos.imp. (35)	11. 2mos.imp. (31)	8. 15mos.imp. (39)	5. 12mos.imp.with recomm- endation for parole after 6 mos. (24)	10. 18mos.imp. (38)
10. 12mos.imp. (18)	12. 2yrs.11mos.imp.(18)	9. 12mos.imp. (23)	6. 6mos.then under I.S.A. (25)	11. 12mos.s.s/G.B.3yrs/ Recog.£25 O.R/Probation for 3yrs/Resttn.of £70. (19)
11. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/Not to purchase drugs (52)	13. 2mos.imp. (18)		7. 12mos.imp. (18)	12. 6mos.imp. (27)
12. 6mos.s.s./G.B.2yrs/ Recog.£100 O.R/Proba- tion for 2yrs. (24)	14. 4mos.imp. (42)		8. 6mos.s.s/N.C.D for 2 yrs/Recog.£50 O.R/ Probation for 2yrs.(17)	
13. 2yrs.imp. (24)	15. 3mos.imp. (26)			
14. 6mos.imp. (20)	16. 3mos.imp. (18)			
15. 9mos.s.s/G.B.3yrs/ Recog.£100 with surety/Probation for 3yrs/condition as to associates (17)	17. 9mos.imp. (21)			
16. 4mos.imp. (24)	18. 3mos.imp. (18)			
17. 6mos.imp. (23)				
18. 9mos.imp. (22)				
19. 9mos.s.s/G.B.2yrs/ Probation for 2yrs. (17)				
20. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/Prob- ation for 2yrs. (18)				
21. 18mos.imp. (19)				
22. 2yrs.imp. (21)				

THREE TO SIX PREVIOUS OFFENCES OF DISHONESTY (continued)

<u>JUDGE A</u>	<u>JUDGE B</u>	<u>JUDGE C</u>	<u>JUDGE D</u>	<u>JUDGE E</u>
23. 6mos.imp. (17)				
24. 6mos.s.s/G.B.2yrs/ Recog.£100 O.R/ Probation for 2yrs. (17)				
25. 18mos.imp. (24)				
26. 6mos.imp. (17)				
<u>MORE THAN SIX PREVIOUS OFFENCES OF DISHONESTY</u>				
1. 9mos.imp. (24)	1. I.S.A. (52)	1. 18mos.imp.	1. I.S.A. (17)	1. 2yrs.imp. (26)
2. 12mos.imp. (20)	2. 12mos.imp. (22)	2. 18mos.imp.	2. 6mos.then I.S.A. (33)	2. I.S.A. (20)
3. 18mos.imp. (24)	3. 1yr.10mos.imp.(17)	3. 18mos.imp.	3. 3mos.imp. (36)	3. 18mos.imp. (34)
4. 2yrs.imp. (26)	4. 6mos.imp. (20)	4. 18mos.imp.	4. 12mos.imp. (23)	4. 9mos.s.s/G.B.2yrs/Recomm- endation as to detention at Ashley Home (17)
5. 18mos.imp. (50)	5. 12mos.imp. (24)	5. 6mos.imp.	5. 6mos.imp. (38)	5. 12mos.imp. (44)
6. 6mos.imp. (44)	6. 6mos.imp. (24)	6. 9mos.imp.		6. 6mos.s.s/Recog.£25 O.R/ G.B.2yrs/Probation for 2yrs. (18)
7. 2yrs.imp. (32)	7. 6mos.imp. (24)	7. 18mos.imp.		7. 18mos.imp. (20)
8. 2yrs.s.s/Admitted to Lachlan Park as volun- tary patient. (36)	8. 6mos.imp. (20)	8. 12mos.imp.		8. I.S.A. (24)
9. 18mos.imp. (25)	9. 4mos.s.s/N.C.D. for 3yrs. (42)	9. 6mos.imp.		9. I.S.A. (17)
10. 12mos.imp. (18)	10. 9mos.imp. (20)			10. 12mos.imp. (17)
	11. 6mos.imp. (49)			11. I.S.A. (40)
	12. 3mos.imp. (19)			12. 18mos.imp. (40)
	13. 6mos.imp. (39)			
	14. 6mos.imp. (19)			
	15. I.S.A. (19)			
	16. 12mos.imp. (36)			
	17. 6mos.then I.S.A. (37)			
	18. 3mos.imp. (36)			

TABLE V.

Summary

There is an indication that there should be certain general changes with regard to sentencing in Tasmania and these in turn depend upon the provision by the State of more facilities for non-custodial treatment.<sup>(1)</sup> If such facilities were available, it appears that a certain number of those at present sentenced to imprisonment for short-terms could be trained or treated non-custodially.

Secondly, where imprisonment is the only suitable sanction, there should be a general tendency by the Courts to impose longer terms. This would permit better reformatory training within the prison and the more frequent and effective use of the Parole Service.

Lastly, those sentenced under the Indeterminate Sentences Act 1921 should be segregated from the other prisoners for a different type of training, and longer periods should be served before release on licence takes place.

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<sup>(1)</sup> See post p. 219 et seq.

## PART IV

### SOME FUTURE STEPS

#### Introduction

The purpose of this study has been primarily to provide a framework for further research by defining the field most closely associated with those persons found guilty of offences by the Tasmanian Courts. It is hoped that more sophisticated research will follow, for although crime can never be eliminated from the community, more concerted efforts should be made to reduce its prevalence by the use of improved techniques of prevention, treatment and after-care.

For some years it has been recognised that criminalistic behaviour is multi-causal, there is never one factor alone which gives rise to a criminal action. Socio-cultural patterns play an important part in affecting the crime rate and for this reason, each community must be considered separately if its weaknesses are to be identified. Modern civilisation with its emphasis upon competition is a two-edged sword. Certainly it promotes enterprise and industry but it also brings particular stresses and anxieties which were virtually unknown in the past. An interesting example of the effect economic pressures can have upon a community is described by Ralph Linton and Abraham Kardiner with regard to the Tanala and Betsileo societies on the island of Madagascar.<sup>(1)</sup> The

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(1) "Readings in Social Psychology" Swanson, Newcomb and Hartley 1952. Henry Holt and Co. New York. at p. 229.

Tanala Society had for many years cultivated rice by the "dry-rice" method. This method called for co-operation and inter-dependence between families to achieve survival. The joint family unit had to move from one land site to another as the land became exhausted. Eventually the Tanala Society changed to the "wet-rice" or irrigated means of cultivation, which was used by the Betsileo Society and most interesting features were observed as a result of the change. The "wet-rice" method did not demand a nomadic type of existence thus homes became settled, property acquired a far greater significance, labour techniques altered, family ties weakened, new life goals arose and class interests and new types of conflict appeared. Generally the pattern of living became closer to that of the Western world. The pursuit of property became the sole means of enhancing the ego and the increase in crime was a noteworthy and overt form of hostility.

Apart from socio-cultural patterns of living, there are other factors of great significance in the incidence of crime. An alarming fact which has emerged from recent research is that by the time even juvenile courts and correctional agencies are called in to cope with persistent delinquents, the roots of emotional and behavioural maladjustment are deeply embedded in personality and character. This factor increases the need for crime prevention. On this subject, Professor and Mrs. Glueck made the following comments: "Little progress can be expected in the prevention of delinquency until family life is strengthened by a large scale, continuous, pervasive programme designed to bring to bear all the resources of mental hygiene,



social work, education, religious and ethical instruction upon the central issue. We must break the vicious circle of character-damaging influence on children exerted by parents who are themselves the distorted personality products of adverse parental influences through the intensive instruction of each generation of prospective parents in the elements of mental hygiene and the requisites of happy and healthy family life."<sup>(1)</sup>

During the course of this study, certain defects in the present Tasmanian system came to light and these have already been discussed. It is now proposed to consider some of the ways in which the correctional processes could be improved. There will be four main topics of discussion: training for social workers, the provision of additional agencies and new techniques of treatment, the setting up of Institutes, and the holding of Conferences and recommendations for future research projects.

#### Training for Correctional Workers.

"What we have learned about the sources of persistent delinquency suggests the answer to a familiar question which continues to puzzle distraught parents, juvenile court judges, clergymen and others who deal with maladjusted youth: Why is it that the delinquents so earnestly

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<sup>(1)</sup>"Unraveling Juvenile Delinquency" Sheldon and Eleanor Glueck 1950. Harvard University Press.

promise and so often actually intend to be good yet so frequently fail to live up to their promises and intentions? The answer is that deeply anchored, subsurface and frequently unconscious forces are too powerful to be modified by a kindly talk with a judge or probation officer or by the threat of punishment. Admonishing the child, exacting promises of good behaviour, threatening with commitment and fining parents, all these are relatively superficial means of dealing with the problem. Because of this and because the understanding of these forces requires a knowledge of several disciplines, the task of coping with juvenile delinquency calls for specialised training."<sup>(1)</sup>

The shortage of trained workers in the correctional field is world-wide but the problem is particularly acute in Australia where many Universities do not offer degrees or diplomas in Social Studies. In 1961, Dorothy D. Gage reported that less than 25% of Australia's probation-parole staff in New South Wales, Queensland, South Australia, Tasmania and Victoria possessed a diploma in Social Work<sup>(2)</sup>. Since that time, there has been an increasing tendency to use the probation and parole services and Departments are being forced to recruit more staff, without paying much attention to their academic qualifications.

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(1) "Unraveling Juvenile Delinquency" Sheldon and Eleanor Glueck 1950 Harvard University Press at p. 288.

(2) "The Probation and Parole Services of New South Wales: their Growth and Development" University of Sydney School of Social Work. 1961 at p.46.

In stressing the importance of training, it is not desired to minimise the other qualifications for successful social work; training alone in the absence of the right type of personality and proper motivation is of little value. It is also important that training programmes should not concentrate on the philosophical approach to social problems to the exclusion of realistic and practical courses such as instruction in counselling techniques.

Some States have now set up In-service Training courses within their different Departments and trainees study contemporaneously with their practical work. The In-service Training Course of the Adult Probation Service of New South Wales comprises University lectures in psychology, case work, community organisation and sociology. A total number of 60 lectures and 30 one-hour tutorials are given in these subjects. In addition, lectures are delivered in the law of evidence, the theory of administration, criminal law, criminology and the theory and practice of adult probation. Trainees with a diploma in Social Studies or equivalent qualification are exempted from the first four subjects but required to complete the others before undertaking the full duties of a Probation Officer.

In Tasmania, the only course at present available for social workers is run by the Hobart Technical College. This is a two-year evening course for a Certificate in Social Welfare and comprises lectures in social casework, psychology, welfare history and social organisation and social legislation. The course is not orientated towards any particular

type of social work and is very broad in its scope. Difficulties have been experienced in finding suitably qualified lecturers for all of the subjects. During 1964, about 20 people enrolled for the course, some of whom are aspiring social workers and others who are studying for personal interest only.

The Technical School course is not designed to replace a University course; ideally the two should run side by side, the Technical School training those who are forced by circumstances to take full daytime employment and the University for students who are interested in careers in social work and for Probation, Parole and Child Welfare Officers contemporaneously with their practical work. It is of course essential that adequate time for study should be given to those also engaged in field work even though this will necessitate an expansion of the existing staff.

Until the need for trained personnel is recognised, the State cannot develop the welfare services to their fullest potential and individual officers will tend to give undue weight to their own practical experiences and subjective opinions.

Additional Agencies and Improved Techniques of Treatment.

A. Institutions for Juveniles.

Tasmania's greatest correctional problem is one which has perplexed penologists all over the world at one time or another; it is the problem of the young offender.

In spite of the plea by the Chief Justice in Lahey v Sanderson (1959) Tas.S.R.p.17, that young offenders should not be sent to prison merely because there is no intermediate institution for them, the Courts are constantly confronted with problems as to the most appropriate methods of treatment. The difficulty generally arises with regard to youths who have already failed to respond to institutional care or to periods on probation.

It is contended in some circles that Tasmania is a small State with limited resources and extensive funds have already been spent in the erection of the Risdon Gaol and the improvements at Hayes Gaol Farm. It is concluded, therefore, that further expenditure on the provision of additional penal institutions is not justified. However, this policy is ashort-sighted one, it fails to take into account public safety and the cost of repeated gaol sentences for youths who should be segregated from older prisoners.

In England, the Borstal system was established in 1908 for offenders between the ages of 15 and 21. Commitment is for an indefinite term of which not less than 6 months nor more than 2 years is spent in Borstal and the rest, in freedom under the supervision of the Central After-Care

Association. The system of training seeks to strengthen character and is based on progressive trust demanding increasing personal decision, responsibility and self-control. In the later stages of training, there is a good deal of freedom to mix with the outside world. The elements of training in all Borstals are a full day of useful work in a workshop or on the land, regular physical training and an active evening with educational or handicraft classes or gymnastics, time for reading and writing and a reasonable time for other recreation.

The boys live in separate communities of 50-60, with a housemaster, matron and house staff. If after he has been released, an inmate fails to comply with the conditions on which he has been released the Central After-Care Association reports to the Prison Commissioners who consider whether he should be recalled. The actual period of detention of a person so recalled is decided by a committee who carefully go into each case. A carefully selected staff gives close attention to the "failures", about half of whom, after a period at a recall centre, settle down satisfactorily. (1)

Since 1948 Detention Centres have also been established in England for young offenders between the age of 14 and 21. By 1963, 15 Detention Centres had been set up, 3 for boys between the age of 14 and 17, 11 for

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(1) A research project of the London Home Office has revealed that offences other than larceny or breaking and entering committed by offenders between the age of 17 and 21 are mostly unlawful use of motor vehicles and these offenders react better to Borstal training than to discharge, fines or other methods of treatment. "Sentence of the Court" H.M.S.O. London 1964 para.162.

boys between 17 and 21 and one for girls between 14 and 21. Their purpose is to provide a method of treatment for young offenders who do not require a prolonged period of institutional training of the kind provided by Approved Schools and Borstals but with whom milder methods have failed or are inappropriate. The regime in a detention centre is brisk and deterrent without being harsh or repressive. The normal term of detention is fixed by Statute at 3 months though sometimes it may be up to 6 months. Progressive training is not possible in that time but the programme is intended to be stimulating rather than punitive.

In Tasmania, as elsewhere, the two classes of youths for whom imprisonment is particularly unsuitable are those who are sentenced for short-terms of 3 months and under and those who are sentenced under the provisions of the Indeterminate Sentences Act 1921. It is precisely these two groups of offenders who are catered for by the English Borstal system and Detention Centres.

It is possible, in the interests of economy that some use could be made of the existing Institutions, for example, the programme at Ashley Boys' Home could be made stricter and admission should be restricted to more serious offenders. It is of vital importance there should be more supervision than there is at the present time after release from such an Institution.<sup>(1)</sup>

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<sup>(1)</sup> Under the Child Welfare Act 1960, Section 45, State wardship usually ceases when the ward attains the age of 18 years.

The establishment of a Detention Centre would provide an alternative to short-term imprisonment without endangering the youths by lack of segregation from older and more sophisticated criminals. The need for such an Institution has been the subject of controversy in Tasmania for some years; in 1962, a Select Committee of the House of Assembly recommended that a Detention Camp should be established<sup>(1)</sup> but the recommendation has not yet been implemented.

#### Leisure Control.

It has been recognised in various parts of the world that deprivation of leisure can be a meaningful sanction for some offenders without involving the national expenditure and the psychological and moral dangers of institutional care.

In Boston, Massachusetts, a Citizenship Training Programme has been established. Boys between the ages of 12 and 17 who are put on probation may be required as a condition of their probation to attend sessions run by the Training Group. Attendance is for 2 hours (3.30p.m. to 5.30p.m.) from Monday to Friday for twelve weeks.

The programme of activities is arranged in periods of one hour. A week's programme consists of one hour each of crafts and woodworking,

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(1) "Police Matters in Tasmania" A report of a Select Committee of the House of Assembly 1962 para.133.



(individual testing) two hours of crafts (group testing), three hours physical training, two hours of group discussion and one hour of visual education. A boy is given a complete physical examination at the outset and arrangements are made for him to receive any medical attention he needs. A psychometrist administers standard psychological tests of intelligence and school achievement; a consulting psychiatrist attends the case conferences, sees each boy and his parents and may refer them to a clinic for treatment. Remedial classes are provided for boys who need them.

At the end of the 12-week period, a report on the offender is sent to the Court which committed him. Depending upon the report, the boy may be discharged, be required to serve a further term on probation with or without treatment or committed to residential care.

A ten year study has been made of a sample of boys who have been through the training programme and it has been revealed that 72.6 per cent of this group has been restored to useful citizenship.

In England, a similar form of treatment is available. An offender, between the age of 10 and 21 guilty of an offence for which an adult could be sent to prison, may be ordered to attend an Attendance Centre for up to 24 hours in all, in periods of not less than one hour and not more than three hours on any one occasion. An order for attendance may also be made in respect of a probationer who fails to comply with the requirements of his probation order.<sup>(1)</sup>

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<sup>(1)</sup> See English Criminal Justice Act 1948 s.19 as amended.

The aim of the treatment is to impose a sanction (the loss of leisure) which is readily understood by children and to teach the offender the constructive use of recreation. Attendance is on Saturdays, the older and younger boys coming at different times, generally for a period of 2 hours. A period of physical exercise is usually followed by a lecture, employment in handicrafts and other instruction.

Efforts are also made to induce boys to join other suitable organisations such as Church Youth Clubs and Police Boys' Clubs.

Boys who fail to attend or commit grave breach of the rules of the Centres, may be sent back to the committing court and be dealt with for the original offence.

The Cambridge Institute of Criminology carried out a comprehensive enquiry into the operation of Attendance Centres for 10 years since their inception in 1950. It was revealed that the general rate of success was 62%, the rate for first offenders was 73% and the rate for recidivists with two or more previous convictions was 50%.<sup>(1)</sup>

Schemes such as the Boston Citizenship Training Programme and the Attendance Centre regime can be run at relatively little cost and have produced valuable results, particularly amongst first offenders. Similar centres could be introduced quite easily in Metropolitan districts in

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<sup>(1)</sup> Offenders committed to Attendance Centres are either first offenders or those who have not been previously sentenced to imprisonment or training in a Borstal, an Approved School or a Detention Centre.

Tasmania. Negotiations with the Police might lead to a sharing of the premises and equipment used by Police Boys' Clubs.

### Child Psychiatric Clinics.

Many behavioural problems of children are symptoms of medical or psychological disorders, which, if dealt with early enough can have a profound influence on personality development. Such behavioural problems are not always anti-social in nature at the outset, but if they continue, the child tends to become neurotic or delinquent or both. Unfortunately parents are often unwilling to seek advice for such symptoms as enuresis and indications of subnormality and there is a great need for public instruction and for an extension of psychiatric and other resources.

This need has been recognised in various parts of the world and Child Guidance and Psychiatric Clinics have been established in an endeavour to meet it. In England it has been estimated that there should be one clinic, staffed by one psychiatrist, two psychologists and three psychiatric social workers for 45,000 children in the population. In Tasmania, there is in fact one clinic which is run by the Education Department for the specific purpose of attending to behavioural and educational problems which have become apparent within the school setting. This clinic attends to cases, for instance, of persistent truancy which

so frequently precedes delinquent behaviour.<sup>(1)</sup>

However, many behavioural problems do not manifest themselves within the school setting but continue and develop until a pattern of anti-social conduct is established and sooner or later, result in Court appearances.

In Victoria, a clinic has been built adjoining the Central Children's Court. On the staff, there is a Psychiatrist Superintendent, a Medical Officer, two Psychologists, two Psychiatric Social Workers, a Sister and clerical assistants. The Clinic, although primarily used by the Children's Courts for the diagnosis and treatment of offenders, may also accept referrals by four other sources: by the Chief Probation Officer who may refer troublesome children on behalf of their parents, by the Education Department, by the Children's Welfare Department and by the Mental Hygiene Authority.

When a referral is made, parents are notified that a social worker will visit the home. Schools, hospitals and other agencies are also visited if necessary. The child is brought to the Clinic and examined both medically and psychologically and the parents are interviewed. The disorder is diagnosed and a treatment programme is planned.<sup>(2)</sup>

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(1) See Report of the Committee on Children and Young Persons. H.M.S.O. London 1960. Cmd 1191 para:381, in which it is observed that truancy is often a symptom of a more general disturbance.

(2) See "Conviction Handbook of Victoria" Criminology Dept. University of Melbourne 1961.

The need for the establishment of Child Psychiatric Clinics in Tasmania has already been recognised in some quarters. In 1962, the Select Committee of the House of Assembly recommended:-

"That Child Psychiatric Clinics (as distinct from the Child Psychiatric Clinic provided by the Mental Health Division for Adults) be set up, each staffed by one psychiatrist, one psychologist, one psychiatric social worker and necessary office staff, and that such Clinics should be housed in close proximity to the Children's Courts"<sup>(1)</sup>.

A building has been purchased with a view to implementing this recommendation but unfortunately suitable staff have not yet been found as there appears to be a shortage of Child Psychiatrists in Australia. It is hoped that efforts to establish the Clinic will be continued with a sense of urgency.

#### Group Counselling and Welfare Work.

The United Nations Standard Minimum rules for the treatment of prisoners require that :-

"The treatment of persons sentenced to imprisonment shall have, as its purpose, so far as the length of sentence permits, to establish in them the will to lead law abiding and self-supporting lives after their release, and to fit them to do so, The treatment shall be such as will

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(1) "Police Matters in Tasmania" A Report of a Select Committee of the Tasmanian House of Assembly 1962. Para. 122.

encourage their self respect and develop their sense of responsibility."<sup>(1)</sup>

In some respects, modern penal programmes have made marked progress towards this ideal: there is generally a wide variety of prison workshops and vocational training available for prisoners; educational and recreational facilities have increased; diet and medical care have improved. In other respects, however, there is a great deal more that can be done, particularly in attending to the psychological needs of prisoners. Those who have worked in close touch with criminals reiterate constantly that the majority of them are weak and shiftless, rather than inherently wicked and calculating. Generally they are immature emotionally and possess little power of perseverance. Home backgrounds are frequently sub-standard both materially and morally and the majority of prisoners are below average in intelligence. It is these problems and character traits which constitute a challenge to those concerned with penal reform today rather than the physical needs of prisoners.

Various techniques are commonly used in an endeavour to restore self-respect to prisoners and to deal with their problems. Group counselling is one such technique whereby prisoners meet in groups of about 12 with a counsellor. The purpose is to allow prisoners to express their feelings, to talk about their problems and help and advise each other. In such a setting, it is the group itself which is the main therapeutic agency and the

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<sup>(1)</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) Para. 65.

leader's work is to guide the discussion discreetly into productive channels.

By this technique, it is hoped to achieve a reduction of tension, hostility and feelings of guilt and to acquire more independence and self-reliance. The value of the group situation to the individual lies in encouragement, acceptance and re-assurance of others with similar problems, whilst at the same time he is helping them. The same type of group strength is the basis of such organisations as Alcoholics Anonymous.

Group Counselling is now taking place in penal institutions all over the world; in Australia group methods are used in New South Wales, South Australia and Queensland. Generally group counselling is designed to deal with conscious rather than unconscious problems, treatment for the latter being the work of the trained psychiatrist.

At the present time in Tasmania, there are no regular group counselling sessions taking place in penal institutions. Counselling is generally on an individual basis and is provided by a variety of people including members of the Prison staff, parole officers, clergy of different religious denominations and voluntary workers. The system at Risdon Gaol enables prisoners to make an entry in a book kept for the purpose, requesting interviews with the appropriate people. Parole officers, who have many commitments outside the Gaol are frequently pressed for time and are unable to carry out regular and systematic interviews with prisoners.

It has already been observed that imprisonment and release should form part of a continuous process<sup>(1)</sup> and it is submitted that this objective can

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<sup>(1)</sup> See ante p.121.

only be achieved by the appointment of a full-time welfare worker at Risdon. With the adequate functioning of after-care organisations, this officer could be a Parole Officer.

If such an appointment were made, far greater emphasis could be given to counselling prisoners, both individually and on a group basis. The Parole Officer would have an opportunity of observing prisoners more closely and discussing their behaviour and industry with trades instructors and the Educational Officer. Pre-release programmes could be organised, particularly for long-term prisoners; these programmes might include a system of work-release<sup>(1)</sup> for a selected few.

As an important part of his work, the Parole Officer would attend all meetings and supervise the activities of the Civil Rehabilitation Committee. He would select prisoners likely to benefit from this type of after-care and introduce them to interested members of the Committee before release. This would afford the prisoner an opportunity to establish a helpful relationship with people outside and encourage him to plan for the future.

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(1) The general principle of work release programmes is that prisoners are employed outside the Gaol during working hours and return at night. Wages go directly to the Administration. There is evidence that the scheme is saving States in the U.S.A. which have adopted it, some thousands of dollars. A careful selection of prisoners is required and the usual types of employment undertaken by prisoners are labouring, painting and other manual jobs. See: "Work Release in the United States" Stanley E. Grupp. Journal of Criminal Law, Criminology and Police Science. Sept. 1963. Vol. 54 No. 3 at p. 267.



Prison Camps.

In the United States, about half of the jurisdictions operate camp programmes for prisoners requiring only minimum security. The type of work undertaken includes the conservation of natural resources by such means as the suppression of forest fires, reforestation, construction of roads, clearing of land for cultivation and the development of State parks.

The penal authorities in Pennsylvania describe their mobile camp and its advantages as follows:

"This camp is a completely mobile unit designed to house 50 men. It consists of the following physical equipment: 10 trailers, 4 of which are dormitory trailers, 2 dining trailers which can be converted to day rooms; 1 trailer divided into a shower unit and a washroom unit; 1 kitchen trailer; 1 storage trailer and one trailer that serves as sleeping quarters for the officer personnel and also serves, being partitioned off, as an office for the camp. In addition to the foregoing, there are 5 prime movers. All of the prime movers, in addition to moving trailers, are used in the forestry operation. There is also a 50-passenger bus and 1 generator.

Using our bus, we take the men from the parent institution to the camp on Monday morning and return them to the institution on Friday evening. All counselling, pre-parole work, dental work, laundry etc. is done on Saturday, for these men. We do not permit any visits in the camp proper; however, we arrange for friends and relatives of men assigned to the camp

to visit them at the parent institution on Saturday and Sunday.

We are still convinced that the mobility of this unit works to best advantage in that we are able to return them to the parent institution on Friday evening and take them back to the camp proper on Monday morning. It seems to have definitely overcome the problem of visits, dental work, pre-parole work, counseling, laundry, commissary issue and other incidentals necessitated by incarceration. We are carrying on an educational program within the camp proper using officer personnel as instructors, supplemented by educational films.

We are of the opinion that the mobility of this unit is a definite advantage in Civil Defence emergencies, in that it would make immediately available a 50-man work force, or, if desired, a kitchen that could be operated 24 hours a day, or it could be easily converted to a 50-bed hospital, if needed for this type of emergency."<sup>(1)</sup>

The particular advantages in the United States, of prison camps are that they reduce overcrowding of prisons, maintenance cost of prisoners is reduced, there is less idleness amongst the prisoners and an opportunity is available for a healthy useful life during "imprisonment". In addition,

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(1) "Wanted in Pennsylvania: Forestry Camps for the Rehabilitation of Delinquents" John O. Reinemann. Prison Journal 28.401-404 No. 2. April 1948 cited in Manual of Correctional Standards of the American Correctional Association 1959 p.447.

valuable work is undertaken for the State Governments.

In Australia generally, and particularly in Tasmania prisons are not overcrowded, but even so, the other advantages of prison camps merit giving the system a trial in the modern setting. In the past, of course, a considerable amount of valuable developmental work was done through the use of prison labour.

#### Parole Boards.

Section 6 of the Prison Act 1908 provides that:-

"(6) (1) The Governor, by an order in writing, on a recommendation under the hand of the Controller, may grant to any prisoner a licence to be at large during such portion of his term of imprisonment, and upon such conditions in all respects, as to the Governor may seem fit.

(2) A prisoner to whom such licence is granted is referred to in this Act as a "prisoner on parole".

(3) The Governor may, upon the like recommendation, revoke or alter such licence by a like order in writing."

It is also provided that if a prisoner on parole is convicted of an indictable offence, his licence shall be forfeited<sup>(1)</sup> and if a licence is forfeited or revoked, the prisoner shall serve a term of imprisonment

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(1) Prison Act 1908. S.9.

equal to the portion of the term which remained unexpired at the time he was granted the licence, such term to be served after any punishment for an offence which gave rise to the forfeiture of the revocation<sup>(1)</sup>.

Both in New South Wales and in Victoria, as in many other jurisdictions, the granting of parole to prisoners is governed to a large extent by the decisions of Parole Boards. Reports are usually placed before the Boards concerning such matters as the prisoner's physical and mental health, his educational and employment records and his home background.

In Victoria, the Adult Parole Boards were established by virtue of the Crimes Act 1958. Section 521 of that Act governs the Constitution of the Boards which shall comprise a Judge of the Supreme Court, the Director of Penal Services and three men appointed by the Governor in Council as members of the Parole Board dealing with male prisoners and three women appointed by the Governor-in-Council as members of the Parole Board dealing with female prisoners.

Where a Victorian Court sentences a person to a term of imprisonment of not less than 12 months, it shall fix a minimum term during which the prisoner shall not be eligible for parole. Where the sentence is for less than 12 months the sentencing Court may fix a minimum term but is not bound to do so. It is provided however that in no case shall the Court be obliged to fix a minimum term if it considers that the nature of the

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<sup>(1)</sup> Prison Act 1908. S.12.

offence and the antecedents of the offender render such action inappropriate.<sup>(1)</sup>

Regulations for remission of sentences does not apply where a minimum term is fixed and regulations may be made for the reduction of minimum terms as an incentive to or a reward for good conduct or industry.<sup>(2)</sup>

In all cases where minimum terms have been fixed by the Courts, Parole Boards may direct that prisoners are released from gaol on parole at the times specified in the orders. Any person released shall be under the supervision of a Parole Officer from the time of such release to the expiration of the gaol sentence and shall comply with such conditions as are specified under the parole order.<sup>(3)</sup> Parole orders may be cancelled, varied or revoked.<sup>(4)</sup>

As provided by the Victorian Social Welfare Act 1960, Youth Parole Boards have been set up to perform a function similar to the Adult Boards with reference to young persons committed to youth training centres. The Youth Parole Boards comprise a Chairman of General Sessions, the Director-General of Social Welfare, and one man appointed by the Governor-in-Council on the Male Board and one woman appointed by the Governor-in-Council for the Female Board.<sup>(5)</sup>

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(1) Victorian Crimes Act 1958. S.534.

(2) Victorian Crimes Act 1958. S.536.

(3) Victorian Crimes Act 1958. S.538.

(4) Victorian Crimes Act 1958. Ss. 538 (1) and 540

(5) Victorian Social Welfare Act 1960. S.27.

The Youth Boards may at their discretion, direct that any young person detained in a youth training centre be released on parole at the time specified in the order.<sup>(1)</sup> The term "youth training centre" is construed widely to include those committed to the care of the Child Welfare Department and to certain juvenile schools. The provisions with regard to cancellation, variation and revocation of the orders resemble those in the Crimes Act 1958.

The Annual Report for the year ended 30th June 1963 contains the following Table relating to releases and cancellations of orders concerning adult male parolees:

	Year Ended 30.6.59	Year Ended 30.6.60	Year Ended 30.6.61	Year Ended 30.6.62	Year Ended 30.6.63	Total Since July '57	%
Release on parole by Order of Governor-in- Council		4	3	6	4	17	-
Releases on parole by Board	648	675	713	772	798	3,926	-
Paroles cancelled by Board	21	18	67	35	62	214	5.42
Paroles cancelled by re-conviction	120	155	185	167	177	832	21.10
Paroles completed	309	408	432	470	499	2,149	54.5
Persons still on parole	448	546	578	684	748	-	18.98

TABLE A

<sup>(1)</sup>Victorian Social Welfare Act 1960. S.41.

61.9% of the offenders released on parole in the year ended 30th June 1963 were aged 30 and under and the largest number of cancellations of orders in respect of all offenders took place between 3 and 6 months after release on parole took place.

The 1963 Annual Report concerning the Youth Parole Boards revealed the following information regarding male youths :-

	Year Ended <u>30.6.62</u>	Year Ended <u>30.6.63</u>	Totals Since <u>1.7.61</u>	<u>%</u>
Releases on parole	135	170	305	
Paroles cancelled by the Board	5	3	8	2.62
Paroles cancelled by reconviction	12	25	37	12.13
Paroles completed	68	102	170	55.74
Persons still on parole	50	90	-	29.51

TABLE B

57.6% of the offenders were aged 14,15 or 16 and the balance were aged 17 or 18 for the year ended 30th June 1963. It was observed that in the case of male youth, as in the case of male adults, the majority of cancellations of orders took place between 3 and 6 months of the commencement of parole.

Although release on parole in Tasmania during recent years has been successful in that relatively few parolees have been reconvicted during their terms on parole, two factors render the statistics somewhat misleading. The first is that relatively few prisoners are released on parole<sup>(1)</sup> and

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<sup>(1)</sup> See ante p. 197.

the second is the short periods of parole upon which the majority of parolees are released. In principle, it is desirable that parole should be the joint responsibility of a Board rather than the sole responsibility of one man<sup>(1)</sup>. Before making recommendations, it is also desirable that the Board should have the benefit of as much information concerning the prisoner as possible. Prediction tables are frequently used to assist in this respect but their reliability is the subject of considerable controversy and it appears they should be used as an aid rather than as a determining factor in selecting prisoners for parole.

The Victorian system of the Courts selecting those eligible for parole by fixing the minimum term at the date of sentence contradicts to some extent the principle of parole. It should be based partly upon the apparent reformation of the prisoner while in gaol and if the Court has not seen fit to specify a minimum term, he is not eligible for parole. Rather, it seems preferable that Courts should make recommendations, as they do in Tasmania at the present time, with regard to parole. In these circumstances the Courts do not make a virtual selection when passing sentences.

#### After-Care.

One of the greatest needs in Tasmania is an extension of the After-

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(1) Such a Board may well take over the work of the Indeterminate Sentences Board, as took place in Victoria.



care services available for prisoners. It has already been shown<sup>(1)</sup> that the number of prisoners released on parole is relatively small and that their periods of supervision are generally inadequate. This phenomenon is a direct result of the tendency of the Courts to impose short term sentences. However, the amendment to the Probation of Offenders Act 1934<sup>(2)</sup>, which gives the Courts power to use imprisonment as a sanction, followed by a period of "probation" is welcome insofar as it provides compulsory after-care for prisoners for terms of up to three years.

There seems no logical reason why the supervision of parolees should cease upon the expiration of their original gaol sentences; paroling authorities should have power to direct a longer period of supervision where they consider it necessary.

After-care, more than any other phase of correctional treatment, is dependent upon voluntary agencies, and public apathy is the greatest enemy of progress. Material assistance is only of limited help to the ex-prisoner, his paramount need is for social acceptance by the community to which he returns. It is now recognised that the most successful means of rehabilitation is to help the offender help himself, and thereby to regain his self-respect. This involves the co-operation

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(1) See ante p.197

(2) Probation of Offenders Act 1934 S.2(B)

of families, friends and employers.

In England, a number of schemes have been devised to assist ex-prisoners and their families make the necessary adjustments before rehabilitation can be achieved. Voluntary associates are now rendering a valuable service, particularly in the London area.<sup>(1)</sup> Briefly, the scheme works as follows: each associate, who is a carefully selected voluntary worker, is invited to correspond with a lonely and inadequate prisoner who has expressed a wish for such support and companionship on release. Every associate has one such person inside prison whom he visits and with whom he corresponds and one ex-prisoner outside, to whom he is expected to give at least one evening a week as well as making himself available by telephone or in recurring crises. At Wandsworth Prison, two voluntary associates organised a "Wandsworth Wives' Group" which has proved to be of great assistance to many wives of offenders. It affords them an opportunity of meeting others facing similar problems which can be discussed quite freely. It also serves to acquaint them with the aims of the penal programme and to help them prepare for their husbands' dates of discharge.

In various parts of the world, there is a growing awareness of community responsibility in assisting ex-prisoners and their families.

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(1) Voluntary associates have also been used in other parts of the world, notably in Holland where the scheme was introduced as long ago as 1823.

Holland has made particular progress in this respect and thousands of citizens are engaged in voluntary prison after-care services. In the United States, voluntary workers play a prominent part in prisoner rehabilitation: in Pennsylvania voluntary sponsors work as assistants to parolees in connection with their personal problems. The great need for hostel accommodation for ex-prisoners is also recognised in many countries and it is generally accepted that smaller hostels are more likely to produce a feeling of "belonging" than larger hostels. Ideally these should be run by husband and wife teams who are prepared to take an interest in the inmates individually.

In Australia progress is also being made slowly but quite steadily. The inauguration of the Australian Prison After-Care Council on 19th May 1960 marked an important milestone in the field of prisoner rehabilitation. The objects of the council are: "To assist and promote all after-care work for prisoners, to co-ordinate the activities of all prisoners' aid associations, parole groups, persons and bodies interested in such work, to maintain liaison with any similar groups and to foster public interest and support in this work."<sup>(1)</sup> The foundation members of the Council were representatives from the Prisoners' Aid Associations of New South Wales, South Australia and Western Australia, from the Prisoners' Society of Victoria and the Prisoners' Aid Society of Tasmania, the Civil

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(1) See Correction Handbook of Victoria. University of Melbourne Criminology Dept. 1961 at p. 201.

Rehabilitation Committees of New South Wales, from the Parole Departments of each State, from the Howard Prison Reform Leagues in New South Wales, Victoria and South Australia, from the Fairlea Women's Prison Council, from the Department of Evangelism and Social Services in Queensland and from Churches of each religious denomination. Since the date of inauguration of the Council, Conferences have been held biennially, the first in Adelaide, and the second in Sydney. Plans are now being made for a conference in Hobart in 1965. Delegates at past Conferences have included people from many different disciplines; there have been members of the Judiciary of various States, psychiatrists, Criminologists, Penologists, Welfare Workers and Church dignitaries.

At the Conferences, papers have been heard on various aspects of Prison After-Care, there have been discussion groups and visits to penal institutions. Not only have representatives from different correctional agencies been present but the Conferences have been organised on an interstate basis.

Within the different States of the Commonwealth, progress has been rather uneven. New South Wales set a valuable precedent in the formation of the Civil Rehabilitation Committees<sup>(1)</sup> and this has been followed in the Australian Capital Territory, Western Australia and Tasmania.

The existing voluntary agencies in Tasmania have already been

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(1) See ante p.131.

considered<sup>(1)</sup> and it is upon them that the future to a large extent depends. However, without public support, voluntary agencies are destined to extinction and it is a cause for some concern that the community as a whole is failing to meet its responsibilities. It is of vital importance that renewed and vigorous efforts should be made to awaken public interest; every available means should be used, such as lectures, films and newspaper articles. Voluntary agencies, with adequate public support, should be able to organise employment, to visit prisoners and their families prior to release and afterwards, to erect and run hostels or "half way houses". All these functions should take place under the discreet direction of professional workers and with adequately financial support from the Government.

The objectives of Prison After-care Services were aptly described by the late Judge A.E. Rainbow:- "It is my belief that profiting by the experiences of our first Conference in Adelaide, we were able to achieve a wider and more diversified contact with people working in this small but important field of prison rehabilitation. I have never believed that we should expect either dramatic or spectacular results. I prefer that by building slowly we shall build on a firm foundation and so ensure that those who come after will find a strong united body of social workers, whether you call them professional or part-time or amateur, who

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<sup>(1)</sup> See ante p. 131.

acting together, can contribute to the solving of our numerous problems.

No system or person will ever abolish crime. Always there will be prisoners. Always, and in increasing numbers there will be discharged prisoners, so that so long as there is an Australia, there will be work for us to do."<sup>(1)</sup>

### Institutes and Conferences.

#### Sentencing Institutes.

The need for establishing common criteria to be used by Judges, magistrates and justices in passing sentences has already been discussed.<sup>(1)</sup> In England, there has been so much agitation concerning the disparity of sentences, particularly in Courts of summary jurisdiction, that compulsory training has now been introduced for all magistrates. It is probable that other countries will follow this lead though its introduction into Australia at the present stage would probably produce an embarrassing lack of justices.

However, there are certain steps which can be taken to assist sentencers in their heavy responsibility and it is up to the Universities in Australia to initiate action in this respect. In the last two years,

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<sup>(1)</sup> Foreword to the Official Report of Proceedings of the Second Australian Conference on Prison After-Care 1962 held at Sydney, N.S.W.

<sup>(2)</sup> See Part I p.3.

the University of New England in New South Wales has in fact held two Seminars on Prisoner Rehabilitation and although this does not have direct bearing upon sentencing problems, at least it sets up a valuable precedent which other Universities should follow.

In the United States and in Canada, sentencing institutes have been set up, the primary purpose of which is to develop common objectives, standards, policies and criteria for sentencing offenders.

The subject of uneven sentencing in Federal Courts was considered at length by the Advisory Corrections Council in the United States of America as early as 1953. The idea for seminars on sentencing gained substantial impetus from a Joint Meeting in 1956 of the same Advisory Corrections Council and the Committee on the Administration of the Criminal Law of the Judicial Conference of the United States. Two years later, after gathering comments and suggestions of the entire Federal judiciary, Congressman Cellar introduced a Bill setting up the Council. It became law on 25th August 1958.

The Statute (28 U.S.C. 334) provides for the establishment under the auspices of the Judicial Conference, of institutes and joint councils to be held on sentencing: "in the interest of uniformity in sentencing procedures." The Statute does not attempt to define specifically what the agenda might be but does list some areas of discussion that might be considered at these seminars. These include:-

1. The development of standards for the content and utilisation of pre-sentence reports.
2. The establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic Clinics.
3. The determination of the importance of psychiatric emotional sociological and physiological factors involved in crime and their bearing upon sentences.
4. The discussion of special sentencing problems in unusual cases, such as treason, violation of public trust, subversion, abnormal sex behaviour, addiction to drugs or alcohol and mental and physical handicaps, and finally
5. The formulation of sentencing principles and criteria to assist in promoting the equitable administration of the Criminal Laws of the United States.

A pilot institute on sentencing for 2 days was convened in July 1959 at the University of Colorado in Boulder and was attended by 55 U.S. District Judges, a few circuit judges and many others including Members of Congress, staff members of the House and Senate Judiciary Committees, representatives of the Administrative office of the United States Courts and the Department of Justice and of several federal law-enforcement agencies. The programme was carefully planned and the Seminar approach was maintained throughout. For each session, there was a panel of 3 persons whose responsibility was to prepare formal papers of 10-15 minutes in length to set the stage for general discussion to follow.



The Boulder meeting was generally considered a successful project and of about the right length. Since then, many similar institutes have been held and have been found to generate understanding between the judiciary and administrative authorities of their mutual problems.

Sentencing Institutes in Australia should be organised on a Commonwealth-wide basis. It has already been demonstrated that in one State, there can be a wide variety of sentencing policies between Judges. A fortiori, there is likely to be a far greater disparity between the different States. A superficial consideration of sentencing policies generally on the Mainland indicates that Tasmanian sentencers are relatively lenient with offenders, particularly in imposing sentences of imprisonment. Thus there is a great need for the provision of a platform upon which views can be shared and public lectures can be delivered. Ideally, sentencing institutes should be held annually on an interstate basis, at Universities in each of the capital cities in turn. Between such annual Institutes, the individual States should organise week-end seminars or conferences, particularly for the benefit of lay justices including special magistrates. There should be opportunities for discussion of mutual problems with those in charge of the penal establishments and with Child Welfare, Probation and Parole Staff.

It is alarming to reflect that comparatively few sentencers visit the institutions to which they so frequently commit offenders. While their own knowledge of these institutions is second-hand, how can they hope to assess the influences which will be brought to bear upon those appearing before them?

It may be said in defence of Tasmanian sentencers that there is little choice available to them in selecting institutions but nevertheless, this is not sufficient reason for the apparent lack of interest. If there are defects in the present system the sentencers should be the first to know of them. Regular visits to penal institutions should be organised for all those having power to pass sentence on offenders. In Tasmania, the Risdon and Hayes Prisons can be reached quite easily from Hobart and visits to these institutions could be included in a week-end programme.

#### Further Research.

A research project inevitably leaves many questions unanswered and of its very nature, suggests further topics for research. This is particularly true of the type of work which has been undertaken here, because it is preliminary and broad in its scope. If it had failed to produce further lines of enquiry, it would have failed in an important part of its purpose.

#### Follow-up Studies

The most obvious field for further research is into the effects of the various forms of sanction used by the Courts. Follow-up studies always present inherent difficulties and perhaps the primary one is tracing the individuals concerned. Secondly, there is no sure criterion of success or failure of a particular measure: the mere fact that there have been no later convictions is an indication rather than a proof that

the individual has not transgressed the law. Another inherent difficulty in research of this kind is common to all projects concerning the behavioural sciences: how can we measure "effect"? How do we know that a man has reformed his ways as a result of a criminal sanction and not as a result of other circumstances? It is only by identifying these problems that we can hope to solve them. In the field of criminology, we can learn much from psychology in the setting up of research programmes, in the control of variables and in the interpretation of our results. We cannot speak in more definite terms than of probabilities based upon statistical computations. This in turn necessitates taking a fairly huge sample of offenders.

Although follow-up studies present very real difficulties, we have no better method of assessing the long term influence of different sentences upon offenders. As a community, Tasmania is particularly suitable for this type of work; it is self-governing and it is small; being an island State, there is relatively little movement of the population to other parts of Australia.

It might be possible, therefore, to conduct a follow-up study of the offenders contained in the 1961 sample, in three or five years time. Comparisons could be made, having controlled the variables as far as possible, of the behaviour patterns of offenders who had been subjected to the different types of measures.

Juvenile Offenders.

The data collected in this project revealed a high incidence of Children's Court records among the offenders<sup>(1)</sup>. Of these, many offenders had been in institutions for at least some period of their childhood.

Recent research elsewhere<sup>(2)</sup> has demonstrated some of the interesting effects which institutionalisation can produce in children, particularly in their very early years of development. Psychologists, especially of the psychoanalytical school, lay great stress upon the experiences and their relationships to the unconscious mind. The role of the mother is vital in personality development. In the institutional setting, the child is deprived of normal family relationships. Even though staff may be conscientious in carrying out their duties, they cannot give the same degree of affection, supervision and discipline to each child as would be possible in a normal family circle. Children are necessarily thrown back on their peer group to a far greater extent in institutions and this has emotional and intellectual repercussions. Instead of modelling their vocabulary and their general behaviour upon the mother figure and the father figure, they tend to use the peer group for this purpose. Thus they tend to develop more slowly and to have lower intelligence quotients than those who are not deprived of family life.

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(1) See ante p.143.

(2) "Child Development and Personality" Mussen Conger and Kagan Harper and Row, New York, Evanston and Mondon 1963 at p. 163.

Valuable research could be done in Tasmania to compare the development of delinquent children in an institutional setting with those who have been placed in foster homes and those who have been placed under supervision orders.

It has been noted that truancy is often one of the first outward manifestations of maladjustment, and an interesting piece of research could be conducted to ascertain the personality traits, the intelligence quotients, environmental situations and medical and psychological histories of those children who persistently truant from school. Among the factors which seem particularly prevalent are low intelligence, a poor degree of family cohesion, and a lack of parental encouragement to attend school.

The care available in Tasmania for mentally retarded children; the Talire School, the Moonah Special School and the Dora Turner School all provide educational facilities for them. A child who truant chiefly because he is unable to keep up with normal school routine can be placed in a School more commensurate with his abilities.

It is by no means uncommon for parents to keep children at home to help with domestic responsibilities. It is observed that vicious circles are often set up: the more the child truant from school, the further behind with his work he becomes and the more reluctant he is to go to school.

It is submitted that the phenomenon of truancy justifies public

expenditure in promoting research.

### Employment

In our modern age and civilisation, there are opportunities for most citizens who are willing to work. Periodically there is a marked rise in unemployment rates, but generally speaking, healthy men in Australia are able to provide measurably well for themselves and their families if they really wish to do so.

The employment of the unskilled labourer tends to be seasonal, but even so, there should not be long periods of idleness.

It has been observed that a marked characteristic of many offenders is a lack of perseverance and this trait is also reflected in their attitudes towards work. Under these circumstances, it seems reasonable to suggest there may be a positive correlation between employment records and criminal records. If this hypothesis could be accepted as a result of statistical computations based upon empirical research, the Courts would feel justified in taking the employment factor into special consideration in selecting sentences.

### State-supported Citizens

During the course of this research, it has become apparent that particular members of the community are drawing a high proportion of the various social welfare agencies. These include the State Government

Social Welfare Department, the Commonwealth Government Social Services Department, the Adult Probation and Parole Service, the Salvation Army, St. Vincent de Paul, Alcoholics Anonymous, Discharged Prisoners' Aid Society, the Hospitals and the Legal Aid Office. A comparison of the records of these agencies might lead to some fruitful results: it should be possible to identify some one hundred families who between them are drawing an undue proportion of benefits. In larger States, this type of research would be difficult owing to the size of the populations and the areas involved. However in Tasmania, all records are easily accessible to Hobart and relatively little travel would be involved in contacting the individuals and families concerned. Having identified them, concentrated efforts could be directed towards investigating the circumstances leading to heavy dependence upon the State and voluntary organisations with a view to counteracting the pressures bearing upon them.

## APPENDIX A

### REPORTS OF THE CORRECTIONAL INSTITUTIONS

#### A. THE GAOLS

##### 1. RISDON GAOL

Extensive funds have been used during the last decade to build the new Gaol at Risdon which is a suburb of Hobart. It comprises two entirely separate divisions, one for male prisoners and the other for female prisoners.

##### a. Male Division.

###### Staff

The staff at the Male Division consists of the following :-

- The Governor, who is also the Controller of Prisons
- The Deputy Governor
- Executive Officer
- Education Officer
- Medical Officer
- Medical Orderly
- Industrial Supervisor
- Principal Prison Officer
- 6 Chief Prison Officers
- 5 Clerks
- 2 Clerical Assistants
- Maintenance Officer
- 7 Trade Instructors
- Services Engineer
- Services Electrician
- Laundry Supervisor
- 82 Prison Officers
- Storeman and Storekeeper
- 5 Boiler Attendants
- 3 drivers.



### Capacity

The total capacity of the Male Division is 324 though the Prison is rarely filled to capacity. The daily average number of prisoners for the year ended 30th June 1964 was 180.85.

Although the daily average number of prisoners at Risdon fell during that year, it is interesting to observe that the total number of prisoners received during that year increased by 18%.<sup>(1)</sup> This phenomenon is attributed in the Annual Report to the high discharge rate of prisoners on hand at the commencement of the year and the high proportion of short-term prisoners.

### Classification and Segregation

Prisoners are classified soon after their arrival and are placed in different yards according to their ages and their criminal records.

The yards in the Prison are as follows :-

- A. Star and well-behaved prisoners
- B & C Recidivists
- D. First offenders - youths under the age of 20 years.
- E. Recidivist youths under the age of 20 years.
- F. Short-term prisoners (i.e. those committed for periods of 3 months or less)
- H. Remand prisoners.

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(1) As per Annual Report of the Controller of Prisons for the year ended 30th June 1964.

- N. Solitary intractibles and those committed to solitary confinement as a punishment.

Each prisoner spends his non-working hours in his yard. There are separate dining facilities for each yard.

### Industries

There is a considerable variety of industries in proportion to the size of the Prison. The industries include tailoring, sheet metal work, tinsmithing, boot making and repairing, laundry work, woodwork, carpentry, mat making, gardening and cooking. Education generally takes precedence over industry insofar as a prisoner who undertakes an Educational course is not expected to engage in full-time industry.

The industry in which a prisoner shall be engaged is decided at the time of his classification. An endeavour is made to accede to personal preferences of prisoners but other factors also have to be taken into consideration, such as ability, length of sentence, and vacancies in the various workshops.

It is often necessary to move prisoners from one type of work to another.

### Education

The Education Officer attends the weekly classification sessions and in conjunction with the Governor, decides whether any of the new prisoners

are likely to benefit from the opportunity to study while in prison. Unfortunately many who would benefit from educational courses are not suitable for enrollment because their sentences are too short.

A variety of educational courses are available and these range from elementary lessons in reading and writing to University degree courses.

As the vast majority of prisoners have achieved very little academically upon admission, very few are able to undertake advanced courses. At the time of inspection, several prisoners had enrolled for the Secondary School Certificate which is, in standard, about one year below the School's Board Certificate level. Other prisoners were enrolled for external courses with the Hobart and Sydney Technical Colleges, one was preparing for the matriculation examination and one was reading for a University degree.

Oral instruction is difficult owing to the variety of courses undertaken and an effort to overcome this problem has been made in the introduction of programmed learning techniques. Text-books are available from the State Library for those prisoners who require them.

### Recreation

There are facilities within the prison for basket-ball, cricket and volleyball and in the future it is intended to make greater provision for physical education.

There are also organised recreational hobbies, which are available

weekly. These include woodcarving, chess and soft-toy making.

Attendance at these courses is a privilege and there is a waiting-list of prisoners wishing to undertake them. Almost every week there is either a documentary film, a concert or a feature film which prisoners may attend if they wish.

### Health

All prisoners are examined medically on their admission to prison<sup>(1)</sup> and if the Medical Officer considers it necessary, a psychological examination may also be made. There is no resident psychologist or psychiatrist but the Government services are available when required. There is a modern dental Clinic at the Prison and a local dentist attends twice a week to prisoners requiring dental care.

### Religious Services

There is no resident Chaplain but priests and ministers of various religious denominations visit the Prison regularly. At the weekends, services are held at different times by Roman Catholics, Anglicans, City Missioners and the Salvation Army.

### Daily Routine

There are variations from time to time, but generally the prison

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<sup>(1)</sup> Prison Regulations 1961. Regulation No. 6.

routine is as follows :-

- 6.45 a.m. 1st bell. All prisoners wash, make beds and tidy cells.
- 7.00 a.m. 2nd bell. Prisoners let out.
- 7.20 a.m. 3rd bell. Breakfast parade, roll call, breakfast and return to yards.
- 8.00 a.m. 4th bell. Fall in for labour, roll call, search and prisoners proceed to workshops.
- 10.00 a.m. Tea break.
- 10.10 a.m. Return to labour.
- 11.50 a.m. 5th bell. Prisoners cease labour, and are searched. Check muster by Officers in charge of the workshops and prisoners return to their yards.
- 12 noon 6th bell. Fall in for dinner parade, roll call to dining rooms, dinner and return to yards.
- 1.00 p.m. 7th bell. Fall in for labour, roll call, search and prisoners return to labour.
- 3.50 p.m. 8th bell. Cease labour, muster by Officers in charge of workshops, search and return to yards.
- 4.10 p.m. 9th bell. Tea parade, roll call, tea and return to cell yards.
- 5.30 p.m. Evening recreation for certain prisoners in yards A - F. Other prisoners remain in their yards.
- 7.45 p.m. Parade of all prisoners in yards A - F.
- 8.00 p.m. Lock up.

#### Weekends and Holidays

- 6.45 a.m. 1st bell. All prisoners rise, wash, make beds and tidy cells.
- 7.00 a.m. 2nd bell. Prisoners let out.
- 7.20 a.m. 3rd bell. All prisoners on breakfast parade, roll call, breakfast and return to yards.
- 12.00 noon 4th bell. Dinner parade, roll call, dinner and return to yards.

4.10 p.m. 5th bell. Tea parade, roll call, tea, return to yards.  
 6.30 p.m. Evening recreation for certain prisoners in yards A - F.  
 7.45 p.m. Parade of all prisoners in yards A - F.  
 8.00 p.m. Lock up.

By virtue of Regulation 109 of the Prison Regulations 1961, no remand prisoner awaiting trial shall be required to work unless he makes a written request to do so to the Governor of the Prison. The Governor then has the discretion in the matter.

#### Diet and Rations

The ration scale per day for the men at Risdon gaol, apart from those in solitary confinement, comprises the following :-

	<u>Ozs.</u>
Bread	18
Meat or fish	16
Vegetables	20
Sugar	2
Tea	2/7
Oatmeal	2
Baking powder	1/16
Dried fruit	1/16
Custard powder	1/10
Milk powder	1/10
Split peas	1/7
Sauce	1/4
Butter	1
Jam	1/5
Rice	2/7
Cornflour	1/12

Prisoners are also entitled to 3 oz. of tobacco, 2 packets of cigarette papers and one box of matches per week.

### Prisoners Earnings

Prisoners are placed in different grades according to the standard of their industry and their conduct. All prisoners start in Grade 3 where they may earn 6d per day. After 6 months in each grade, they are eligible for promotion. In Grade 2, earnings are 9d per day, in Grade 1 they are 1/- per day and in Special Grade, prisoners earn 1/3d per day.

In additions to earnings, gratuities are paid on releases according to the following scale :-

<u>Length of gaol term served</u>	<u>Amount of Gratuity</u>
Less than 7 days	5. 0.
Exceeding 1 month but not exceeding 6 weeks	7. 6.
Exceeding 6 weeks but not exceeding 2 months	10. 0.
Over 2 months	1. 0. 0.

A prisoner who commits a breach of discipline may, by the order of the Controller, be demoted to a lower grade or be ineligible to receive earnings for as long as the Controller determines. <sup>(1)</sup>

If a prisoner is convicted of a gaol offence, the Controller may order that the whole or any part of his earnings at the time of the commission of the offence shall be forfeited. <sup>(2)</sup>

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(1) Prison Regulations 1961 Regulation 48 (7).

(2) Prison Regulations 1961 Regulation 49 (1).

Correspondence and Visitors

All mail is censored and may be withheld in the discretion of the Governor<sup>(1)</sup>. Prisoners are permitted to write two letters each month and there is no restriction upon the number they may receive. In special cases, prisoners may obtain the Governor's permission to write additional letters.

Prisoners are allowed to be visited immediately after admission and thereafter at intervals of not less than one month.<sup>(2)</sup>

b. Female Division

Staff

The staff at the Female Division of the Risdon Gaol comprises the Matron and 5 Wardresses.

Prisoners

The total capacity is 23, but the daily average for the year ended 30th June 1964 was only 5.69.

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(1) Prison Regulations 1961 Regulation 56 (1)

(2) Prison Regulations 1961 Regulation 66.



### Industries

Owing to the very few female prisoners in the State, the number of industries available for them in the gaol is necessarily restricted. Generally the women are employed in laundry work, sewing, knitting, cooking, housework and gardening.

### Education and Recreation

Correspondence courses are available for women who wish to study and the Library is stocked with books from the Male Division of the prison.

The Female Division is equipped with a television set which is intended to take the place of the recreational activities available for male prisoners.

### Regulations Generally

Although certain of the Prison Regulations 1961 do not, of their nature, relate to female prisoners, on the whole they are subject to the same rules, privileges and measures of disciplinary control.

## 2. HAYES PRISON FARM

Considerable funds have been used during the last 2 years to improve the Prison Farm at Hayes. A new administration block has been built and new cell accommodation at the time of inspection, was nearing completion. This will provide separate cells for all prisoners.

### Staff.

The staff consists of the following :-

The Farm Manager  
Chief Prison Officer  
One Storeman  
One Stockman  
14 Prison Officers

### Prisoners

The full capacity of the Prison Farm itself is 50 and it is generally filled to capacity, the daily average number of prisoners there for the year ended 30th June 1964 being 47.63.

The Charitable Institution, which is situated within the grounds of the Prison Farm accommodates 28 offenders. These prisoners are generally alcoholics, vagrants or drunks who are sentenced there direct by the Courts. The daily average number of prisoners detained at the Charitable Institution for the year ended 30th June 1964 was 3.98.

### Farming Activities

Prisoners from the Gaol Farm and those who are fit from the

Charitable Institution are employed in general farming duties.

On the 30th June 1964, the following stock was on hand :-

55 head of dairy cattle  
30 head of beef cattle  
229 pigs  
1705 sheep

Poultry were introduced in August 1964.

The dairy provides sufficient milk to meet the requirements of prisoners at Hayes and at Risdon. In addition, approximately 200 lbs. of butter is made monthly.

A variety of crops are grown and these include hay, wheat, oats and a large number of vegetables. During the year ended 30th June 1964, 575,840 lbs. of vegetables were grown at the Farm and in addition to prisoners' requirements these were used to meet the needs of local schools and hospitals.

The improvements which have been made at the Farm during the last few years include the installation of an irrigation system, the erection of sheds and poultry pens, repairing and painting and clearing, and fencing. Prison labour has been used in connection with all these projects.

### Recreation

Television has recently been introduced at the Farm. Football is played each weekend during the winter and the summer sports are cricket and basketball. Films are shown monthly by the Education Officer from the Risdon Gaol.

### Regulations Generally

The regulations are generally the same as those relating to prisoners at Risdon, though in some respects there is less direct supervision and the discipline is somewhat relaxed.

There is a constant interchange of prisoners between Risdon and Hayes and there is no restriction upon the type of offender who may be sent to the Farm provided his conduct has been of a sufficiently high standard.

### 3. LAUNCESTON GAOL

The Launceston Gaol is situated in Cameron Street, Launceston, within the precincts of the Police Office.

### Staff

The staff comprises two Police Officers, one of whom is the Gaoler and the other is the Assistant Gaoler.

### Prisoners

The full capacity of the prison is 12, consisting of 10 cells for male prisoners and 2 for female prisoners.

At the time of inspection, there was only one male prisoner detained at the Gaol, and it is rarely filled to capacity.

General Comments

Generally the Gaol is only used for the detention of prisoners for very short periods; if a prisoner is sentenced to more than 7 days, he is usually transferred to Risdon.

There are no occupational facilities for prisoners at the Gaol: they are released from their cells at 8 a.m. and are locked up at 5 p.m. During the day, they may sit in the day room where playing cards, books, magazines and censored newspapers are available. There is also a small walled-in exercise yard for the use of prisoners. Meals are served in the day room.

Visitors are permitted to see prisoners for 20 minutes between 10 a.m. and 12 p.m. or 1 p.m. and 3 p.m.

The Prison Regulations 1961, where relevant, apply to prisoners detained at the Launceston Gaol.

B. THE JUVENILE INSTITUTIONS

1. ASHLEY HOME FOR BOYS

Ashley Home is a State run Institution for delinquent boys generally falling within the age group from  $14\frac{1}{2}$  -  $17\frac{1}{2}$ . It is situated just outside Deloraine and the buildings and grounds cover an area of 89 acres.

Ashley was first acquired by the Department of Social Welfare in 1923 and from that date until comparatively recently was used for boys of a much wider age range and for boys of vastly different backgrounds and records of delinquency.

During recent years however, it has developed into an Institution for older boys many of whom have been at Wybra Hall and have not responded to the training there. The buildings are now rather a miscellaneous combination of the old and the new.

The Home is run on a Class system and the boys have their accommodation accordingly. For boys who respond to training and whose work and conduct have achieved the necessary standard, there is a privilege cottage in which they all have their own separate cubicles. A member of the staff, his wife and a housemaster also live at the Cottage. Most of the boys sleep in the Main Dormitory Block and there is a separate secure unit for boys requiring harsher discipline. A security officer patrols the main dormitory and the security unit at night. Both the privilege cottage and the secure unit can house up to 6 boys and the

remainder are accommodated in the main dormitory.

### Capacity

There are usually about 26 boys resident at Ashley though if necessary, the Home can accommodate up to 40.

### Staff

The staff comprises the Superintendent, the Deputy, 2 housemasters, a Matron and Sub-Matron, 2 male cooks, 1 trade instructor, 1 farm instructor, 1 utility officer, 6 security officers, 2 of whom are part-time, and 4 attendants. The number employed is large compared with the other Institutions but there are 2 reasons for this: firstly the boys require a greater degree of supervision and secondly, most of them are at the Home all the time, whereas in other Institutions the children are sent to school. The Superintendent has been employed at the Home for 8 years, during which time there have been considerable changes in policy.

### Education

Most of the boys do not attend school though a few go to the Deloraine High School to continue their formal education. Boys attending school are accommodated in the privilege cottage, irrespective of their Class, to permit them to do their homework. In some cases the boys do correspondence courses at the Home which are supervised by the members of

the Staff. However most boys have a history of irregular school attendance and poor academic records and are only too pleased to discontinue their studies. In these cases applications are made for exemptions from the School's Board Certificate.

### Training

When a boy is first sent to Ashley, unless he is attending school, he is put on to general duties. These include domestic work, gardening some building and painting and odd jobs. After a period of 2 - 3 weeks, he is selected for a special job which may be either on the farm, in the trade section, maintenance work or in the kitchen. Endeavours are made to comply with particular preferences of the boys but in practice it is usually found there is a waiting list for farm work.

About 6 boys are employed on the farm and the Home owns 40 milking cows. A dairy was built by the boys and members of the staff in 1962 and is equipped with a milking machine which was assembled by the boys from spare parts. Fodder for the cattle is grown and also potatoes. As many boys are discharged to farm placements, this is perhaps the most practical form of training available. The milk is used partly by the Home and each member of the staff may buy up to 2 pints per day, the proceeds of which sales are paid into consolidated revenue. The cream is sent to the local butter factory and butter is returned to the Home.

As certain witnesses suggested to a Select Committee of the Tasmanian Legislative Council in 1963, the farm work should be extended by the



cultivation of more vegetables, fruit trees and sheep and cattle should be tended not only as an educational measure but also to make the Home self supporting in this respect. In this way, more boys would be able to engage in activity on the farm.

In the trade section, carpentry is taught to about 6 boys but with very few exceptions, they lack either scholastic ability or perseverance required to enter apprenticeship when they leave the Home. It seems rather pointless that carpentry should occupy all the working hours of boys who are generally unable to take advantage of the training and it is suggested that carpentry should be engaged in purely as a recreational activity and more boys would thus be available for the farm.

Two or three boys are employed in the maintenance section and they are given instruction in welding and general repairs.

The kitchen employs 4 boys who work in shifts of 2 at a time under the supervision of the cooks. Boys are quite frequently discharged to similar work leaving the Home.

After a period of one month, a boy may apply for a change of a special job but if he does not like a second special job, he is put on to general duties until the date of his discharge. This in turn affects the pocket money which he may earn.

The boys in the secure unit are responsible for doing all the laundry for the Home. There are two washing machines installed in the unit and equipment for ironing. The secure unit boys also cut firewood, make

concrete blocks and cultivate a small plot of ground enclosed in a quadrangle within the unit.

### Routine

The daily routine of the boys generally follows a similar pattern :-

7.00 a.m. Rise, wash, make beds.  
 7.30 a.m. Breakfast  
 8.15 a.m. Morning muster followed by work  
 10- 10.15 a.m. Morning break  
 10.15 - 12noon Work  
 12 noon Lunch  
 1 p.m. - 3 p.m. Work  
 3 p.m. - 3.15 p.m. Afternoon break  
 3.15 - 4.30 p.m. Work  
 4.30 p.m. Hot showers  
 5.00 p.m. Tea  
 6.00 - 8.30 p.m. Recreational activity  
 8.30 p.m. Bed, except for privilege cottage boys.

The weekends do not follow a strict routine - on Saturday afternoons, there is often some form of organised recreational activity.

### Visiting

Visiting is not restricted to the weekends. There is a special room where boys may see their parents if they wish to do so. Otherwise they

may take them into the grounds of the Home.

### Punishment

Primary emphasis is placed upon the Class system by which privileges are given or withdrawn according to conduct.

There are 5 classes in addition to Privilege class and Secure Unit class. Each class carries with it certain privileges and generally boys must work up from one class to the next. The work and conduct of the boys is reviewed monthly.

The Privilege Cottage boys are permitted to go home one weekend in the month. In addition they have considerably less supervision and are permitted to go to bed one hour later than the other boys. They have their own sitting room and recreation room.

The privileges which boys in Class 1 to 5 enjoy are graded. Fifth class is reserved for short term punishment only and in this class, boys must spend leisure time in performing some unpleasant manual occupation. If a boy is placed in fifth class for a breach of discipline he does not have to work his way through the other classes but at the end of the punishment he is restored to his former position.

New boys are placed automatically in third class.

Pocket money is calculated according to occupation, conduct and industry. The average amount earned by a boy is 3/6d per week and this may be spent at the Canteen where boys under the age of 16 may buy sweets

and older boys may buy cigarette papers and tobacco.

Corporal punishment is not administered officially at Ashley as the general policy of the Home is to reform the boys by other means. Emphasis is placed upon such activities as group discussions and dramatic productions.

#### Medical Treatment

All boys after their arrival at the Home are psychologically examined and their height and weight and general physical condition is assessed by the Matron.

A doctor from Deloraine attends those boys who require medical care and equipment has now been installed for dental treatment to be given to boys on the premises of the Home.

#### Home Activities

In addition to the recreational activities already mentioned, a variety of indoor and outdoor sport is available. A television set has been installed in the Home, and viewing is a privilege which is reserved for boys in any class above fourth class.

The Department of Social Welfare own land at Port Sorrell and boys are taken there in small groups for weekend trips. Members of the local Lions and Apex Clubs occasionally arrange barbecues and cricket matches for the boys.

### Religion

A Chapel was built within the grounds of the Home by the boys and staff and was finally completed in 1963. The Anglican, Methodist and Presbyterian Ministers from Deloraine have rostered themselves to visit the Home on Wednesday mornings and evenings alternately. A Roman Catholic Priest also attends the Home to give half an hour's instruction on Wednesday morning to boys desiring it. There are no celebrations of Holy Communion or Mass in the Chapel. Attendance at any form of religious instruction or service is purely voluntary.

### 2. WYBRA HOME FOR BOYS

Wybra Hall is a State run Institution for boys situated at Mangalore, 17 miles from Hobart. It was built about 80 years ago as a private home and was acquired by the State Government in 1956. The original purpose of the Institution was fourfold :-

- (1) For the reception of boys between the ages of 10 and 17 from the Southern part of the State, pending Court action.
- (2) For the observation of boys who have been remanded for the purpose, and for medical and psychiatric examination.
- (3) For the classification of the appropriate placement of boys following committal or admission to the care of the Social Welfare Department and
- (4) For the comparatively long term admission of boys between the ages

of 10 and 15 who, because of behavioural difficulties required institutional training.

In practice, about two-thirds of the boys generally fall within the terms of the fourth category.

Wybra Hall is a large building of red brick, it has been well preserved during the years and at the time of inspection was immaculately clean. The Government purchased the 100 acres of land surrounding Wybra Hall and this is being cleared gradually.

#### Capacity

The usual number of resident boys is between 20 and 30, though as many as 36 can be accommodated in an emergency.

#### Staff

The resident staff comprises the Superintendent and his wife, who is the Matron, a deputy Superintendent, a sub-matron and a cook.

At the time of inspection, the other members of the staff were non-resident and comprised a housemaster, a utility officer, a domestic worker and a cook.

#### Education

All the boys at the Home at the time of inspection, save one older boy, attended the Brighton Area School where they were encouraged to mix freely

with the other children. It has been found necessary to supervise all homework to ensure that the boys take adequate time and trouble with it. Although some boys would doubtless benefit from a High School education where they might attain their School's Board or Matriculation Certificates, this is not encouraged owing to the practical difficulties involved such as transport and fitting in the Home training programme.

### Routine

Mondays, Wednesdays and Fridays are known as "work days" and this means that boys are rostered to take part in some fixed physical activity upon their return from school. Accordingly, the routine on these days of the week is as follows :-

- 7.00 a.m. Boys in charge of cattle rise, wash and make beds.
- 7.30 a.m. Other boys rise wash and make beds.
- 7.57 a.m. Boys line up in scullery.
- 8.00 a.m. Breakfast.
- 8.20 a.m. Household duties. These include a variety of tasks such as sweeping tidying and washing up and drying up. A roster is drawn up in respect of these duties.
- 8.50 a.m. Inspection of household duties.
- 9.00 a.m. Boys line up on front verandah for inspection and to receive instructions for the day.
- 9.07 a.m. Boys catch bus for school.
- 3.40 p.m. Boys return from school, wash, change and clothes are inspected.

3.50 p.m. Afternoon tea or cordial with biscuits.

4. p.m. - 5 p.m. Outdoor physical work. This covers a variety of activities including looking after the stock, gardening, and various projects which are designed to train the boys to be useful citizens. One such project was the construction of a water hole for the poultry,

5.30 p.m. Tea followed by Bible reading.

6.15 p.m. Boys rostered to undertake scullery, kitchen or dining room tasks while others feed the stock.

Homework follows immediately and after that the boys have a recreational period. One night a week there is compulsory physical training in the Gymnasium.

8.30 p.m. Boys wash, go to bed and prayers are then said before the lights are turned off.

Tuesdays and Thursdays are known as "play days" and between the hours of 4 p.m. and 5 p.m. there is compulsory sport. This may be football or hockey in the winter and swimming, cricket, tennis, baseball or volleyball in the summer.

#### Saturdays

7.30 a.m. Boys in charge of the cattle rise, wash and make beds.

8.00 a.m. Other boys rise, wash and make beds.

8.27 a.m. Boys line up in the scullery.

8.30 a.m. Breakfast.



9.00 a.m. Household duties. These are changed every Saturday between the boys.

10.00 a.m. Morning tea.

10.10. a.m. - 12 p.m. Physical work.

12.30 p.m. Dinner

The rest of the day is not rigidly organised.

On Sundays the boys are taken to Church in Brighton at 11 a.m.

The rest of the day is subject to a flexible programme.

#### Visiting

Visitors may come to see boys by arrangement on Saturday afternoons.

#### Punishment

It is the policy of the Home to withdraw privileges rather than to inflict physical punishment unless a serious offence has been committed. There is also a secure room at Wybra in which boys are placed for persistent or serious misbehaviour.

If a boy absconds, the usual punishment is 4 cuts with a cane followed by a period in the secure room.

#### Medical Treatment

Each boy is examined as to his medical and dental health soon after admission. Details are also taken of his past medical and surgical

history and the immunisations which he has received. Psychiatric reports are obtained if the Superintendent considers they are necessary.

#### Home Activities

Although the boys attend school full time, in non-working hours they are subjected to organised and strict training. The land at the back of the Institution is being cleared and already the Home is self-supporting in vegetables. The Home owns sufficient cattle to meet all its requirements for milk and there are poultry to provide eggs. Boys take an active part in the cultivation of vegetables and in the care of stock. Also, as an additional interest, the Home owns an impressive selection of show birds, most of which have been bred there. There is a small aquarium indoors stocked with a variety of species of fish.

Considerable emphasis is placed upon sporting activities and physical training. Indoors, there is a television set which boys may watch at certain specified times.

#### Pocket Money

The pocket money paid to the boys ranges from 1/- per week to 4/- per week. Out of the sum received, each boy must give 3d per week to the Church collection and 3d per week must be banked. The amounts banked are credited to accounts opened in the boys' names and may be spent at the annual fair.

### Religion

The boys are generally brought up to attend the Church of England though if any of them have strong affiliations with other denominations, an endeavour is made to maintain their Church membership.

### 3. BARRINGTON HOME FOR BOYS

Barrington Home for boys is run by the Salvation Army and is situated in New Town, a suburb of Hobart. The original building was a private house and was built approximately 125 years ago. It was acquired by the Salvation Army in 1945 for the purpose of opening an institution for boys and since that time, considerable extensions have been made to the original building.

### Capacity

The Home caters for about 40 boys between the ages of 5 and 16; approximately one third of them have Juvenile Court records and the rest are either State wards who have been placed there by the Director of Social Services or boys who have been admitted upon private application.

It is the policy of the Home to restrict the number of delinquent boys admitted there as it is considered a greater proportion could not be absorbed without endangering the atmosphere of the Home and possibly corrupting the boys who have not been before the Courts. When a boy with

a Children's Court record is admitted to the Home, the offence is usually only known to the boy and the Superintendent. It is found that by adopting this policy it is possible to distinguish between those boys who genuinely wish to reform and those who are defiant or proud of their behaviour.

### Staff

The staff comprises the Superintendent, his wife who is the Matron, one male and one female officer, all of whom are employed at the Home full time. In addition the Home employs a cook, a laundress and a seamstress.

### Education

The boys attend different local schools according to their age and ability. Some children, owing to physical or mental handicaps attend special schools while the remainder are at Primary or High Schools. Occasionally a boy who has left school is permitted to remain at the Home pending placement.

### Routine

The usual routine during the school term is as follows:-

7.00 a.m. Rise, wash, make beds.

7.15 a.m. Home duties - each boy performs set household tasks.

7.30 a.m. Breakfast

7.50 a.m. Morning Prayer and Bible Story.  
 8.00 a.m. Boys leave for school.  
 3.15 p.m. Boys return from school and do homework.  
 4.30 p.m. Home duties  
 5.00 p.m. Tea.  
 6.00 p.m. Homework or recreation  
 6.45 p.m. onwards Bed.  
 9.00 p.m. Lights out.

On Saturdays, the routine is relaxed and boys are virtually free to choose their activities. Some undertake odd jobs either within the Home or outside for which they are permitted to earn pocket money. Such earnings are placed in a Trust account but may be withdrawn as the boys desire. In addition, all boys are given 1/- each per week for pocket money.

Various outings are arranged by the staff at the weekends.

### Visiting

Parents and visitors are permitted to see the children every Saturday. On every alternate Saturday they may take their children out from 9. a.m. to 7.30 p.m. and on the first weekend of the month, boys may stay out overnight on the Saturday and return to the Home on the Sunday.

### Punishment

The Home is entirely open and although the boys are free to walk around the streets on their own, there are relatively few abscondings.

There are no facilities within the Home for locking boys up. Boys are rarely caned for misbehaviour, a more frequent form of discipline is to enforce performance of an unpleasant task. Privileges are not often withdrawn from boys for misbehaviour as such action is considered to provoke a spirit of resentfulness.

### Medical Attention

Medical attention is provided by a local doctor and by the Outpatients Department of the Royal Hobart Hospital. Dental treatment is given through the different schools which the boys attend.

### Home Activities

Outdoor activities are encouraged and within the grounds of the Home there are facilities for playing tennis and cricket. There is little organised recreation as the policy of the Home is to foster the boys ability to occupy themselves.

There are no facilities within the Home for carpentry or woodwork.

Gardening is encouraged and boys are given small plots of land to cultivate if they wish to do so.

Religion

Unless a boy has a particularly strong connection with a Church of another denomination, all the boys attend the Salvation Army Citadel while they are at the Home. There is a variety of organised religious activities during the week, including the daily morning Prayer and Bible story and hymn singing on Sundays.

4. KENNERLEY HOME FOR BOYS

In terms of a Deed of Gift dated 20th March 1876, the Honourable Alfred Kennerley gave certain lands and buildings in North Hobart to form trustees for the purpose of perpetuating an Industrial School previously known as "The Boys Home" which had been certified under the Industrial Schools Act 1867.

The Deed contained certain conditions including one which provided that the management of the Home should vest in seven Governors who should be chosen every three years.

It was also provided that the Trustees should not permit the lands to be used for any purpose except for the Institution and should not permit any boy to be admitted unless ordered there in accordance with the provisions of the Industrial Schools Act 1867, or if repealed, under a similar enactment.

Subject to the "fundamental regulations" contained in the Deed, the Governors were given power to make such rules for the management of the

Institution as they should think fit.

The general purpose of the Deed of Gift seems to have been to establish a Home for boys of broken homes or orphans, but not to admit boys who were delinquents.

In recent years, a great deal of emphasis has been placed on the desirability of bringing up children in the setting of a normal family background, that is, with a mother figure, a father figure and a small group of peers to take the place of siblings. Psychology has demonstrated the disadvantages of institutional life for children and thus more and more have been placed in foster homes.

The situation has arisen that there are far more delinquent children requiring institutional care than there are orphans or children from broken homes. Thus among the State wards who are resident at Kennerley, about 25% of the boys have been found guilty of offences before a Juvenile Court.

The Home which is in West Hobart, has recently fallen into a state of considerable disrepair owing chiefly to financial difficulties and the number of staff changes which have taken place during the last few years.

#### Capacity

The full capacity of Kennerley is 30 though at the time of inspection there were only 25 boys resident in the Home. The age range of the boys is generally between 7 and 16.



### Staff

At the time of inspection, there were only two resident members of the staff, the Superintendent and the Matron. Efforts were being made to appoint another resident staff member. The non-resident staff comprised a laundress, a seamstress and a cleaner.

### Education

At the time of inspection 17 boys attended a local High School, 8 attended Primary schools and one attended a special school for retarded children.

### Routine

The week day routine during the term time is as follows :-

6.30 a.m. Rise, wash and make beds.

7.00 a.m. Breakfast

7.30 a.m. Household duties which are rostered between the boys

8.15 a.m. onwards boys leave for school.

3.15 p.m. Boys return from school and commence homework or have leisure period.

5.30 p.m. Tea

6.30 p.m. onwards Bedtime.

The weekends are not organised according to a strict timetable.

There is generally some form of sport available for the boys on Saturdays.

### Visiting

Parents and friends may visit the boys at the weekends, or in special circumstances, at other times.

### Punishment

Kennerley is an entirely open Institution and there are no facilities for locking up boys. If a boy persists in absconding or very bad behaviour he is removed to another Institution. Corporal punishment is only used where no other form of punishment is practicable. More frequently, privileges are withdrawn or the offender is given an unpleasant task to perform.

### Medical Treatment

Two Hobart doctors act as honorary Medical advisers to the inmates of the Home and dental care is generally obtained from the respective school Clinics.'

### Home Activities

Boys are encouraged to take an active interest in sport, particularly in hockey, cricket and physical training.

The Trustees own a holiday shack at Penna and boys are taken there as often as possible for weekends where they are encouraged to go for walks, to swim and to go fishing.

On Saturday mornings boys are allowed to take outside jobs for private individuals to augment the pocket money they are given. Ledger accounts are opened for each boy and their savings are credited to them.

For the boys indoor recreation, the Home owns a television set and viewing is a privilege which may be withdrawn for bad conduct.

#### Pocket Money

The younger boys are paid pocket money at the rate of 1/6d per week and this is increased by 6d per week after every birthday.

#### Religion

Clause 7 of the Deed of Gift provides "All boys admitted to the said Institution and whilst inmates therein shall receive religious instruction in accordance with the doctrine discipline and usages of the Church of England and Ireland in Tasmania and shall attend the Services of the said Church every Sunday."

Accordingly, boys attend a local Anglican Church every Sunday. Roman Catholic boys are not admitted to the Home though there is no discrimination between boys from other Protestant denominations.

#### KENNERLEY HOSTEL

A hostel was opened in 1951 within the precincts of the Boys' Home for the purpose of assisting boys to make the adjustment to community life

upon their discharge from Kennerley. Primarily this was intended to accommodate boys who entered into apprenticeships and therefore boys are charged a flat rate of one third of their wages for board. The State Government has subsidised the Hostel to an amount of £250 per annum.

A married couple run the hostel and there is accommodation for 12 boys, each having a separate cubicle. Close association is maintained with the Boys' Home.

In recent years the hostel has not been used exclusively for boys discharged from Kennerley Boys' Home and boys from other Institutions have also been placed there by the Department of Social Welfare.

##### 5. BETHANY HOME FOR BOYS

Bethany Home for Boys at Lindisfarne is run by the Church of Christ and is in the charge of a married couple and an assistant.

##### Capacity

The Home caters for about 12 boys and at the time of inspection, their ages ranged from 5 to 14. The whole atmosphere of the Home resembled that of a large family and this effect was partly produced by the fact that the Superintendent and his wife have three boys of their own who are treated just as the other boys.

The boys are mainly wards of the State, though at the time of inspection,

about one third had been placed there upon private application. The wards are generally neglected children though some uncontrollable boys are also committed to the Home by the Department of Social Welfare.

### Education

The older boys attend the Rose Bay High School and the younger boys go to the Lindisfarne Primary School.

### Routine

The routine is not rigid and depends to a large extent upon the different age groups. However the timetable is generally as follows :-

6.30 a.m. Rise shower and dress.

6.45 a.m. Household duties for those boys rostered to help in the kitchen.

7.10 a.m. Daily devotions

7.30 a.m. Breakfast.

8.00 a.m. High School boys go to school.

9.00 a.m. Primary School boys go to school.

3.15 p.m. onwards. Boys return from school and those with homework do it either before or after tea.

5.30 p.m. Tea

6.00 p.m. Recreation

7.00 p.m. onwards Bedtime.

There is no fixed routine at the weekends though generally the elder boys are encouraged to help in the garden on Saturday mornings. Those who wish to do so may work for private individuals either after school or on Saturday afternoons.

### Visiting

Visitors are encouraged to call at the weekends and every effort is made to maintain contact with the boys own homes though in many cases these are far from satisfactory.

### Punishment

Generally privileges are withdrawn though the little boys are slapped for persistent misbehaviour.

### Pocket Money

The five year old boys are given 2/- per week and the older boys are paid 3/6d per week. Money which the boys earn is in addition to the pocket money they receive.

### Medical Treatment

An honorary doctor and honorary chemist attend to the boys medical needs. The dental clinics attached to the schools provide dental care for the boys at the time of inspection but this was found to be rather inadequate owing to the long delays over appointments.

### Recreation

The Home has facilities for ping pong, darts and football. There is also a television set in the Playroom.

Outings are arranged whenever possible by the staff and individuals are also encouraged to take boys out.

### Religion

The Home is run by a Committee of the Church of Christ who have instituted a scheme called the Friends of Bethany to assist the Home financially. The staff are generally active members of the Church of Christ and bring up the boys to attend services of that denomination.

## 6. MAGDELEN HOME FOR GIRLS

Magdalen Home for Girls is run by Roman Catholic Sisters of the Order of the Good Shepherd, an Order which was founded in France in the 17th Century to promote work amongst delinquent girls.

The Home commands a magnificent view overlooking Sandy Bay. The site and the original building were acquired by the Order about 66 years ago and considerable extensions have been built since that time. The present buildings which are of red brick are well maintained and the grounds are beautifully kept with an abundance of flowers.

Capacity

Although the Home caters primarily for delinquent girls, in fact comparatively few have been before the Juvenile Courts. The majority of the children are problem girls who have proved themselves beyond the control of their parents and have been placed there upon private application. At the time of writing, there were, apart from The Nuns, 150 girls and women who lived at the Home. Of these, about 84 were teenagers, 26 were older girls who did not want to leave the home and about 20 were girls who had been committed to the Home under the terms of the Mental Deficiency Act 1920. The remainder were Auxiliary Sisters who were previously admitted to the Home as delinquent or maladjusted children but had subsequently offered their services to the Order.

Staff

The staff comprises 21 Nuns, the head of whom is known as the Mistress. All the girls are divided into groups and in charge of each group is a Nun, known as the Group Mother who is assisted by one or more Auxiliaries.

Education

At the time of inspection, only about 24 of the girls were schoolgirls, the others falling into older age groups. One of these schoolgirls attended a special school for retarded children and another attended an ordinary High School. All the other schoolgirls were educated at the Home by one of



Nuns who was assisted by outside teachers. Most girls attain the equivalent of the 8th Grade and then obtain exemptions. Any girls who wish to continue their studies to a higher standard may do so by correspondence courses which are supervised by the Nuns. The instruction which is provided from outside sources includes dressmaking, cooking, speech training and ballet. There is also a home sciences course which is available for older girls and typing is available for those who wish to attend the classes.

### Training.

The Home is equipped with large washing, drying and pressing machines for laundry work. The laundry service is the means by which the Home keeps financially solvent as no subsidy is received from outside apart from the State Government grant which is made towards the weekly maintenance of State wards. The Home undertakes all the laundry service for the Royal Hobart Hospital and many local hotels. Some private orders are also taken.

Because of the extent of the laundry work, most of the girls are employed in it full time. However, six girls are occupied full time in the kitchens under the supervision of a Nun and three are responsible for all the washing up and house duties.

### Routine

The weekly routine is as follows:-

6.50 a.m. Rise, shower, make beds. Girls are rostered in pairs for cleaning the shower rooms.

7.45 a.m. Breakfast.

8.20 a.m. Catechism for Roman Catholic girls, Bible lesson (conducted by a Nun) for non-Catholic girls.

9.00 a.m. Work in laundry begins and schoolgirls help there until 9.30 a.m.

9.30 a.m. - 12 p.m. Schoolgirls have lessons

12.00 p.m. Lunch

1.p.m. - 3.15 p.m. Schoolgirls continue lessons and then return to assist in the laundry.

1.p.m. - 5 p.m. Laundry girls continue work though some are excused to go to dressmaking classes at 3.00 p.m.

5. p.m. - 6 p.m. Sport or walks organised in the Groups.

6 p.m. Tea.

Evening activities are varied; some girls attend typewriting classes and handwork is taught by the Group Mothers. There are also ballet classes and weekly choir practices.

Saturdays are not organised rigidly though sometime during the day the Home is given a thorough cleaning and girls wash their own clothes.

On Sundays and Holy Days all girls, irrespective of their denomination, go to Mass in the Chapel. After breakfast, there follows a period of instruction in the Hall. At this session, the Mistress chooses some particular topic on which to address the girls. These topics include such matters as preparation for marriage or some aspect of general behaviour.

Benediction is said during the afternoon after which there are no

further organised or formal activities. Films are sometimes shown on Sunday evenings.

### Visiting

On every other Sunday afternoon, parents and friends are permitted to visit the girls between the hours of 2.30 p.m. and 4.30 p.m. On the fourth Sunday of every month, girls are allowed to have a days outing with their parents but apart from this concession visitors may only see girls within the grounds of the Home.

### Punishment

The Nuns are not allowed to administer corporal punishment to their girls under any circumstances whatever. The girls are therefore disciplined mainly by the withdrawal of privileges, such as losing their pocket money or being forbidden their monthly outing. Pocket money is generally paid at the rate of 6.- per fortnight and this may be spent by the girls as they wish. All purchases must be made at a small shop within the precincts of the Home and the merchandise includes ice creams and confectionery.

Each Saturday there is an organised assembly of each Group when the Group Mothers review the behaviour of all girls within their groups. Marks are awarded and 5/- is paid to the girl with top marks in each group. There is keen competition for this honour.

There are no facilities for locking up girls within the Home. Girls

who abscond, on their return to the Home are generally made to wear a plain blue house dress for a period of one month. This is considered a punishment.

#### Medical Treatment

A local doctor attends to the girls medical needs in an honorary capacity. Dental care, however, is not free and the Home generally sends the accounts to the girls' parents.

#### Home Activities

Most of the activities within the Home are organised in the weekly routine and have therefore been mentioned already. As much variety as possible is given to the girls within the precincts of the Home but there is very little contact with the outside world. Owing to the difficulties which some girls have experienced in making the necessary adjustment to life within the community after leaving the Home, a Hostel has been opened in the grounds since 1962. This accommodates up to 8 girls who are in outside employment and they are permitted to remain in the Hostel as long as they wish.

#### Religion

Girls are taken into the Home irrespective of their religious persuasions. Apart from the compulsory Mass on Sundays and Holy Days of

Obligation, girls are not bound to enter into the Roman Catholic form of worship. Clergy and Ministers from other denominations have in the past visited the Home regularly though this practice had ceased at the time of inspection.

It is significant, however, that although the majority of the girls entering the Home are not Roman Catholics, most of them become members of that Church during their period of residence there.

#### Cosmetics and Smoking.

Schoolgirls may only use cosmetics at the weekends, otherwise there is no restriction as to make up. The older girls are also permitted to smoke.

#### 7. WEEROONA GIRLS' TRAINING CENTRE

Weeroona Home is run by the State Government at Latrobe for delinquent girls. It has been operating since October 1961 and accommodates up to 25 girls falling within the age range of 12 - 17.

The building was originally a private house but it has been extended considerably since it was acquired by the Government. It was in a very good state of repair when inspected and was well looked after by the girls and the domestic staff.

### Staff

The staff should comprise a Principal, a deputy Principal, a Cook, a laundress and two attendants. In the past, the Principal, Deputy and one attendant have been resident at the Home. However, there has been considerable difficulty in finding suitable staff and at the time of inspection, there was a temporary Principal only.

### Education

The girls who are considered likely to respond to further schooling are sent to the Area School at Latrobe. In practice, most girls are employed domestically at Weeroona. Correspondence courses are encouraged but are undertaken by relatively few girls. Great difficulty is found, as is common with maladjusted girls, in stimulating their interest in educational courses.

### Training

The girls are divided into three groups, one of which is employed in the laundry, one in the kitchen and one in general household duties. The groups are rostered each month so that each girl gains experience in the different tasks. At the time the Home was inspected the usual domestic routine was somewhat disrupted owing to the staffing problems. The number of girls had also been reduced temporarily and the training was restricted. The girls were only able to attend to their own domestic

laundry though the washing facilities are suitable for commercial use.

Once suitable staff appointments are made and if the drying equipment is enlarged, it would seem practicable for the girls to undertake outside orders.

### Routine

At the time of inspection, the weekday routine for the girls who were not attending school, was as follows :-

- 7.30 a.m. Rise, shower and dress.
- 8.00 a.m. Breakfast
- 8.30 a.m. Bedmaking and dormitories tidied.
- 9.00 a.m. Work
- 11.00 a.m. Morning break
- 11.15 a.m. Work
- 12.30 p.m. Lunch
- 1.30 p.m. Outdoor recreational period
- 2.30 p.m. Work
- 4.30 p.m. Baths and change
- 5.30 p.m. Tea
- 6.30 p.m. Recreational period
- 8.30 p.m. Bed.

The weekend routine is more casual and there is no set timetable.

Visiting

Visiting by parents and friends is not restricted to particular days and times owing to the difficulties involved in reaching Latrobe. Girls are not generally permitted to return to their own homes for weekends as this is found to have a disturbing effect upon them. However, there is no flexible rule and concessions will be made in exceptional circumstances.

Punishment

There is a separate secure unit at the rear of the main building which can accommodate up to four girls in cubicles, similar to cells. There is also a staff bedroom in the Secure Unit. A girl is generally placed in the Secure Unit for persistent bad behaviour or for absconding. This precaution has been necessary in respect of absconding girls not only as a disciplinary measure but also for reasons of hygiene owing to the prevalence of venereal diseases amongst them.

In other cases of bad behaviour, privileges are withdrawn though there is no graded class system as at Ashley Home.

Corporal punishment has been administered in the past when it has been considered necessary. Pocket money of 4/- a week is payable to each girl; this may be withdrawn as a disciplinary measure at the discretion of the staff.



### Medical Care

Medical treatment is given by a local doctor from Latrobe; dental care is provided by the Dental Clinic in the town. Owing to the situation of Latrobe, it has been difficult to organise psychiatric treatment for those girls needing it. This factor is an obstacle which will have to be overcome if Weeroona is to develop to its fullest potential.

### Home Activities

Unfortunately there has been relatively little contact with the rest of the Latrobe community in the past and it is hoped that local groups will be encouraged to take more interest in the welfare of the girls.

Within the grounds, there is a hard court upon which the girls play ball games and team games.

Indoors, there is a television set, a record player with a number of records of popular music and a small library.

The staff endeavour to take the girls upon outings whenever possible and there is a station waggon available for this purpose.

### Religion

In the past there has been an unfortunate lack of religious instruction for the girls and it is hoped that this situation will be remedied.

Cosmetics and Smoking

There is no restriction upon the use of cosmetics which may be bought by the girls from their pocket money. The older girls are permitted one packet of cigarettes each week.

8. MAYLANDS HOME FOR GIRLS

Maylands Home for Girls is the Sister Institution to Barrington, both Homes being run by the Salvation Army. The building, which is in New Town, a suburb of Hobart, was originally a large private house but was acquired by the Salvation Army in 1945. The exterior decorations are rather drab and the building is a depressing example of Victorian architecture with lofty rooms and long draughty passages. However, the Home is nicely furnished and very well maintained.

Capacity

The Home can accommodate 36 children and caters for girls between the ages of 2 and 16 and boys between the ages of 2 and 5. About half of the children are State wards and of those relatively few have Court records though many show symptoms of maladjustment. Quite a number of children have brothers at Barrington Home and therefore there is fairly close contact between the two Institutions.

Staff

The staff consists of the Matron and Assistant Matron who are both Salvation Army Officers, two resident staff, who are in charge of the laundry and housework respectively, and three workers who live away from the premises but attend daily.

Education

All the children, save those who are too young, attend schools in Hobart. Some are High School pupils, some go to the New Town Primary School and some go to special schools for retarded children. At the time of inspection, a few girls were preparing for the School's Board examination but none had reached Matriculation level.

Routine

The weekday routine for schoolgirls is fairly rigid :-

6.30 a.m. Rise wash and make beds.

7.00 a.m. House duties. These tasks include tidying and sweeping and are rostered between the girls.

7.30 a.m. Breakfast.

8.00 a.m. Prayers and Bible story.

8.15 a.m. onwards Girls leave for school.

3.00 p.m. Girls return from school, clean their shoes and change.

5.00 p.m. Tea.

6.00 p.m. onwards. Homework, recreation and bedtime depending upon age.

The routine at the weekends is more relaxed; the older girls are encouraged to take outside employment on Saturday mornings for any member of the public who may engage their services. The usual type of work done by the girls is ironing and general housework. Any wages they earn from such employment is paid into a Trust account kept by the Matron which may be withdrawn by the girls if they wish. In addition to any such earnings, schoolgirls are paid the sum of 2/- per week for pocket money.

### Visiting

The visiting arrangements for parents and friends are similar to those at Barrington Home. Contact with the family is encouraged even though the private homes may be sub-standard.

### Punishment

The Home is entirely open and girls are permitted to come and go as they please. The need for discipline is not so great as it is at Barrington owing to the younger age group at Maylands and the relatively low proportion of children with Juvenile Court records.

Corporal punishment is not administered except as a last resort. If a girl indulges in persistent bad behaviour, arrangements are made for her removal to Weeroona Training School.

For minor instances of mis-behaviour, punishment is varied according to the circumstances. Privileges are sometimes withdrawn while in other

cases the child is made to perform an unpleasant task.

#### Medical Attention

Medical attention is provided by an honorary local doctor and by the Out-patients Department of the Royal Hobart Hospital. Dental care is provided through the different schools which the girls attend.

#### Home Activities

Owing to the wide age range of the children, there is relatively little corporate activity. Older girls belong to the Police Girls Club and are permitted occasional trips to a local cinema. There are facilities at the Home for playing basketball and batlington and girls are encouraged to join in their school sports.

One evening per month is devoted to handwork and girls are assisted with knitting and sewing.

#### Religion

The position with regard to religious training is the same as it is at Barrington. Children are brought up to attend the Salvation Army Citadel unless they have strong associations with another religious denomination.

## 9. THE RECEIVING HOMES

There are five Receiving Homes in the State, three in Hobart, one in Launceston and one in Wynyard. All Receiving Homes are State Institutions and in most cases, in the charge of a married couple, the wife giving full time attention to the Home and the husband also having outside employment. In exchange for their services, they receive free accommodation, fuel, light and telephone and are paid board rates for each child.

Children between the ages of 14 days and 18 years may be placed in a Receiving Home for assessment and in order to determine the most appropriate method of treating them. Generally the Homes are used to provide temporary accommodation for neglected children or children who have been with foster parents but the relationship has broken down. However, the Homes are also used to accommodate on a temporary basis, children who have been found guilty of offences by the Children's Courts or on discharge from an Institution pending further placement. Boys over the age of 10 who have behavioural problems are generally sent to Wybra Hall rather than to a Receiving Home.

The Hobart Receiving Homes, Kanangra, Malmesbury and Rochebank have each taken on slightly different functions owing chiefly to the particular abilities of those in charge of them. The arrangement seems quite satisfactory; one Home is especially suited for teenagers while another is more suited to the needs of children of primary school age and babies.

Each Home can take up to 8 children. They are all entirely open and the atmosphere is completely relaxed with only a minimum amount of discipline. Many of the children coming into the Homes are suffering from the effects of severe emotional shock and consequently the opportunity to adjust themselves in an informal family atmosphere is of particular value to them. It also gives the Department of Social Welfare a chance to observe the child away from the strained atmosphere of the Court or his own home environment, and to avoid making hasty decisions as to the child's future.

Each Home in Hobart is under the direct charge of one of the women Welfare Officers and in all cases a close liaison is maintained with the Department of Social Welfare.

## APPENDIX B

### FIVE CASE HISTORIES

#### A.

A. was born in Hobart in 1937 into a large family; he has four brothers and five sisters but has virtually lost contact with them now. His father has a criminal record but has not been in conflict with authority for many years and seems to have settled into fairly steady employment as a moulder. A. says that within the family circle, his mother is the authority-figure but he has never been able to confide in her and there was always some friction between them. There appears to be very little family cohesion.

A's criminal record reveals the following convictions :-

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
2.4.52	14	Breaking and entering (3) Stealing (2)	Committed to the care of the Social Services Dept.
5.5.54	16	Breaking and entering (3) Stealing (3)	Cautioned only.
11.2.55	17	Stealing (6)	Bond £10. To be of good behaviour for 12 months and to reside at Bethany Boys Hostel at Dover for 6 months
13.3.56	18	Housebreaking (6) Stealing (7) Attempted housebreaking(1)	Sentenced under the Indeterminate Sentences Act 1921
31.7.61	23	Stealing (11) Housebreaking (7) Breaking & Entering (4)	18 months imprisonment



<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
23.5.63	25	Housebreaking (6) Stealing (6) Housebreaking (12) Stealing (12) Attempted housebreaking(1)	3½ years imprisonment.

A. was interviewed in 1964 at the Risdon Gaol where he was serving his last sentence. He was a young man of good appearance and a plausible manner. He was quite co-operative and rapport was established without difficulty. Outwardly, he appeared submissive and smiled amiably throughout the interview.

His record shows that A's anti-social behaviour has been of long standing. He was first admitted to the Bethany Boys Home at Dover before he was 9 years old, on the application of his parents. They stated at that time that they were unable to control him. He was reported to have an adverse affect on the other children there and was eventually admitted to Ashley. A. was at Ashley intermittently from the age of 9 until he was 14 and his first recorded conviction took place within 12 months of his release from the Home. His record at Ashley was neither good nor bad and A stated that he liked being there and enjoyed the companionship of other boys.

Soon after his release, he returned home to live and obtained employment at the Wharf. The domestic situation, however, deteriorated and eventually A moved out into a boarding house where he renewed the acquaintance of another boy he had known at Ashley. Together they came into further conflict with the Police.

In between the subsequent terms of imprisonment, A has tried a variety of jobs and at one stage served  $3\frac{1}{2}$  years apprenticeship to become a Master baker. The apprenticeship terminated as a result of a further gaol sentence and on his release, A states he was too old to complete it. He also took up tailoring for a short period but was unable to find a suitable apprenticeship. This situation, A attributes to his age at the time. All through his childhood and early adulthood, A had a record of persistent truancy from school, the Bethany Boys' Home and later from work.

In Prison, A has been employed in the Tailor's shop for most of his working hours. At the time he was interviewed, he had just started a correspondence course for a certificate entrance to the Sydney Technical School. His subjects were general mathematics, algebra, physics and geometry, and according to the Prison Education Officer, he showed reasonable ability. It is interesting to observe that although a Psychologist's report in 1957 described A as being of average intelligence, at Ashley Boys' Home, he was rated as being only of dull/normal intelligence. A had no definite plans with regard to his future but expressed a vague desire to go to the Mainland where he thought his chances of finding employment would be greater.

In spite of his assertion of enjoying the company at Ashley, A maintained he has always been shy of mixing and never had many friends at school. He now prefers the company of a girl friend to being in a mixed group or with a crowd of boys. His experiences with the opposite sex appear to have been very unfortunate and he claims that a girl friend

involved him in heavy expenditure which led to his last conviction for stealing. This association was subsequently terminated by the girl's marriage to someone else but at the date of the interview, A still appeared preoccupied by thoughts of her.

A's maladjustment dates back to an early period in his youth which co-incided with unhappiness both at home and at school. He does not appear to have benefitted from his institutional treatment and there is evidence that associations formed at Ashley have had a deleterious effect upon him.

A now seems quite an enthusiastic and able worker but lacking in the necessary perseverance to complete undertakings on which he embarks. He gives the impression of having drifted into crime and lacks sufficient strength of will and purpose to make full use of his abilities.

B.

B was born in Hobart in 1942 and was brought up mainly by his grandmother in whose home he lived with his mother and two sisters. B's father divorced his mother in 1951 and went to live in Sydney. Since that time the father remarried and has lost contact with B. B's mother was an excessive drinker and eventually died in 1952 leaving him with his grandmother.

B's criminal record reveals that his delinquencies started before there was an actual separation between his parents :-

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
23.8.50	8	Stealing (2) Uncontrollable child	Committed to State care.
30.6.54	12	Breaking & Entering (2) Stealing (2)	Cautioned only.
11.8.54	12	Unlawful use of motor vehicle	Cautioned only.
29.6.55	13	Stealing (2)	Committed to State care.
16.5.56	14	Stealing (2)	Committed to State care.
27.8.58	16	Stealing (5)	Committed to State care.
3.10.60	18	Stealing	Bond for £25. and to be of good behaviour for 2 years.
17.6.61	19	Breaking & Entering (1) Stealing (1)	12 months suspended sentence on condition :- (1) to be of good behaviour for 2 years. (2) enters into a Bond for £50 on his own recognizance. (3) to be under the supervision of a probation officer and to obey his directions including those with regard to psychiatric treatment.

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
1.9.61	19	Stealing (1)	Bond for £25. To be of good behaviour for 12 months.
17.5.62	20	Loiter for immoral purposes	Released on Bond for £10, to be of good behaviour for 6 months and to consult a psychiatrist.
8.6.62	20	Larceny (6)	1 month imprisonment.
24.8.62	20	Burglary (1) Stealing (1)	15 months imprisonment.
20.9.62	20	Breach of Bond	12 months imprisonment at the expiration of the above sentence of 15 months.
5.6.64	22	Unlawful use of motor vehicle (1) Attempted unlawful use of motor vehicle(1)) Escape	)12 months imprisonment. ) ) 12 months imprisonment

B's record shows a great reluctance on the part of the Courts before which he appeared, to sentence him to imprisonment. However, his case illustrates the great need for more effective means of non-custodial treatment.

A considerable period of B's childhood was spent in Institutions. He was at Boys' Town, Wybra Hall and later at Ashley Boys' Home. From the records concerning his behaviour at these various Homes, he was not recognised for some time as being deeply maladjusted. He suffered a good deal of ill-health during his extreme youth and eventually had a mastoid operation.

In his later teens at Ashley, he showed considerable ability at sport and at play acting.

At Wybra Hall, B was rated as being of dull/normal intelligence; he eventually reached the 8th Grade at school and at the interview expressed regret that he had not persevered and obtained his School's Board Certificate.

B has taken various types of employment, ranging from photography to unskilled labouring. Latterly, his employment has been interrupted by sentences of imprisonment but he has never shown any industrial stability.

The interview took place at Risdon Gaol in 1964 where B was serving a further term of imprisonment. Although his answers with regard to factual information were generally correct, he gave the impression of being sly and had a cynical facial expression. He claimed that life at Ashley and at the Prison frightened him but was unable or unwilling to elaborate further on the nature of his fears. B indicated his resentment of his grandmother's attempt to discipline him and to restrict his social activities. However, he admitted that his offences have usually been committed after he had been drinking and that his social associations have had an adverse effect upon his behaviour. He claims that the offences he has committed have not been premeditated.

Although B has been advised twice by the Courts to seek psychiatric treatment, his behaviour has shown no sign of improvement. His institutional experiences also have failed to have a reformatory effect upon him and it seems unlikely he will discontinue his life of crime under the present conditions.

C.

C is the ex-nuptial child of a married woman whose husband was a prisoner-of-war in Japan. The identity of C's natural father is not known.

When C's step-father returned to Tasmania, he became re-united with his wife but refused to recognise C and the child was placed in an Institution from the age of 6 months.

The following convictions have been recorded against C :-

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
19.2.59	15	Obstructing a railway line	Re-committed to State care.
27.1.61	17	Damage to property	Fine
6.2.61	17	Stealing (3) Unlawful use of motor vehicle	42 days imprisonment
24.4.61	17	Stealing (2) Assault	1 month imprisonment
17.7.61	17	Stealing (2) Housebreaking (2)	6 months suspended sentence on condition:- (1) To be of good behaviour for 2 years. (2) Enters into a Bond for £50 in his own recognizance (3) To be under the supervision of a probation officer for 2 years.
2.11.61	17	Damage to property Stealing (2)	28 days imprisonment.
12.4.62	18	Breaking & Entering (4) Burglary (2) Stealing (3)	6 months and then to be imprisoned under the Indeterminate Sentences Act 1921.
10.5.62	18	Breach of Bond Breaking & Entering	6 months imprisonment.
12.8.63	19	Unlawful use of a motor vehicle (2)	6 months on each charge and licence revoked.

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
17.9.63	19	Stealing Burglary	12 months imprisonment.

C was in the Northern Home for Boys in Launceston from the age of 6 months until he was 11 years old. His behaviour became progressively worse and eventually he was transferred to Wybra Hall where he spent the next couple of years. He caused considerable trouble at Wybra and admits absconding as many as 12 times after which he was moved to Ashley Home. The reports from each Institution were very unfavourable, C was vicious and unpredictable; there were violent outbursts of bad temper. Of his school career, C said "It was all right over my head, so I refused to go." In fact, he never reached a higher standard than Grade V.

At the interview at Risdon Gaol in 1964, C was surprisingly co-operative once rapport was established. At first he appeared to be aggressive and resentful, but subsequently he relaxed and talked quite freely. He stated that he had never been outside an Institution for a period of more than three months since he was originally placed in the Northern Home for Boys. An examination of the files in the different Government Departments indicated that this assertion was probably correct. During one of his short interludes "outside", C made an endeavour to trace his mother and his step-father. Eventually he did so, only to be rejected by them once more. There is little doubt that their attitude had a shattering effect upon C. In his own words: "After that, I thought they could all go to hell and I'm better off in Gaol; so I went out that night and did a couple of busts."

Owing to C's very short periods in the community, it was impossible to



make an assessment of his employment record. He said he had done some labouring work but had never kept a job once his record became known. There is evidence that on release from prison, C has taken to excessive drinking and has associated mainly with ex-criminals.

In prison, C has been employed mostly in the kitchens and spends a great deal of his leisure time reading. He has become very embittered through his experiences and thoroughly institutionalised. He remarked: "There's nothing for us outside, only a bit of drink. We get our smokes inside." He says he settles back into prison routine quite easily after the first three or four months. A member of the Prison Staff observed that he is very aggressive and anti-social in his attitude immediately following each reconviction.

Rather obviously, C has no plans for the future. He said he had no desire for marriage unless he has a job and a home.

Circumstances have dealt C many bitter blows in life and his situation has been aggravated by his own bitterness and anti-social behaviour. It seems apparent that imprisonment will have no reformatory affect upon him but will probably increase his resentment and give him abundant opportunity for further introspection. The longer he stays in prison under the existing circumstances, the less able he will be to face the responsibilities of community living.

D.

D was aged 36 when he was convicted of stealing on 15 counts by the Supreme Court of Tasmania in 1961. He had no previous record but his crime was relatively serious and he was sentenced to 3 years imprisonment.

D was interviewed at the University of Tasmania in August 1964. At that time, he appeared self-assured and confident.

In his early life, D was a sickly child. He was afflicted for many years with bronchial complaints. Also he had considerable trouble with his feet and had three operations on them whilst a schoolboy. He was the younger son of his parents, his only sibling being a brother two years older than himself. The family appears to have been in quite a secure position financially; D's father was for many years a prominent member of the community. D spoke highly of both his parents though apparently there was constant friction between them and once the two boys married the parents separated and later, were divorced. D's mother subsequently remarried and his father died while D was in prison. Although D recalls an atmosphere of intense strain in the home, he never felt compelled to take the part of one parent against the other.

D left school, at the age of 15 without having achieved any particular distinction, save that he had an artistic flair and subsequently undertook a course in ticket-writing and show-card writing at the Hobart Technical College. His first job, however, was in his Father's business firm where he remained for  $4\frac{1}{2}$  years, having been rejected by the Army during the war

years because of his injured feet. .

D left his Father's firm of his own accord to work as a sales assistant for 9 years in a Shoe Store. He married at the age of 25 and 3 children were born of the union, who were aged 6, 3 and 1 respectively at the date of the conviction. D left the Shoe Store to go into partnership in a Real Estate Business with a man he had known for some years. According to D, his partner was in very ill-health throughout the partnership and after about three years, D bought his share in the business. From that point onwards, matters seem to have become out of control. The business expanded too quickly, branch offices were opened, extra staff were engaged and supervision was obviously difficult. There seems little doubt that D had no dishonest intentions at the start but when it came to his attention that some commissions had been drawn before they were due, he did not make a refund out of the business profits immediately. The practice of drawing commissions before they were due continued but D claims that he intended to make good the deficiencies as soon as he could.

However, he did not realise the extent of the indebtedness for some time and when he discovered that he had overdrawn almost £7000, he approached his Solicitor and Accountant and eventually the whole matter was referred to the Police.

D's behaviour in prison was exemplary. He undertook a course in sign-writing at which he apparently excelled. During his working hours, and when he had proved himself a trust-worthy prisoner, he was given yard duties and was responsible for cleaning the administrative offices at the

prison. He earned his full 9 months' remission and after he had served 21 months, he was released on parole.

After his release, and in spite of efforts made by the Parole Officer, D was without work for a period of almost 8 weeks. Eventually he obtained a job selling lime on the north coast and subsequently accepted an appointment on the staff of a newspaper. From that time onwards, D has made excellent progress industrially and has been recently promoted to a Managerial position. His family have played a valuable role in D's rehabilitation; his wife worked during his imprisonment and they have been able to set up home together since his release.

Although D's history is well-known throughout Tasmania, he has not been generally rejected from a social point of view. He has been elected to sundry executive committees for such movements as the District Scouts, the Agricultural Show, the Tourist and Progress Association and the Parents' and Friends' Association of his son's school.

It seems highly unlikely that D will offend again. He has made a tremendous effort to rehabilitate himself and in this endeavour, he has had the consistent support of his family. Welfare organisations have assisted him and the social community to which he was released proved sympathetic rather than critical.

While these advantages are uncommon to many ex-prisoners, D's progress should prove an encouragement to others.

E.

E has been an orphan since he was four years old. His father died when E was less than 12 months and his mother died 3 years later, leaving 4 children, of whom E was the youngest. E can only vaguely recollect his mother.

The interview took place in August 1964 at the Office of the Adult Probation and Parole Department. At that time, E was 20 years old and was a well-dressed stocky lad of average height and with a quiet though self-assured manner.

From the age of 4, he was placed in the Barrington Salvation Army Home for Boys and remained there until he was 16 and had started work.

With regard to his behaviour in the Home, it was reported by the Superintendent that: "He fitted into institutional life and could perhaps be considered as a typical long-term institutional lad, well-behaved under supervision whilst a schoolboy but quickly resentful of guidance when he started work and his status changed to that of a boarder. We had no cause to fault him re honesty whilst a schoolboy. The school reports emphasised his lack of interest at school and this was typical of his attitude generally. He quickly made contact with undesirable lads when he started work and we found him increasingly hard to approach and after a few months, he was so resentful of any suggestion of guidance that he was transferred to the working lads Hostel at Kennerley." Apparently none of E's relatives took any interest in him while he was at Barrington.

E's criminal record reveals that all his offences took place within a period of 14 months immediately following the date he left school:-

<u>Date</u>	<u>Age</u>	<u>Offence</u>	<u>Sentence</u>
20.7.60	16	Obstructing a railway line	12 months probation.
14.9.60	16	Destroying property (2) Stealing	Fine £10.
16.8.61	17	Stealing	Bond £25. To be of good behaviour for 2 years.
27.9.61	17	Breaking and entering Stealing	6 months suspended sentence, on condition that:- (1) To be of good behaviour for 2 years. (2) To enter into a Bond for £100 on his own recognizance to be of good behaviour for 2 years.. (3) To be under the supervision of a Probation Officer for 2 years.

Although E showed no particular enthusiasm for study at School, he did obtain his School's Board Certificate which was of considerable assistance to him in finding employment. His favourite activity was apparently sport and he has maintained his interest in football since he left school.

Of his social relationships at Barrington, E stated he made plenty of friends and has kept up with many of them since he left the Home.

At the age of 16, E transferred to the Kennerley Boys Hostel where he lived for about a year. He complained that there was too much supervision at the Hostel and that boys were expected to do too much housework.

When E first left school, he entered an apprenticeship to become a

fitter and turner but he disliked the discipline of the study involved and the wages were very low. After about 1½ months, he took a position as a teller-clerk in a timber firm where he remained for the following 6 months. His next employment was as a storeman clerk and that job lasted for approximately 9 months. There was then a short period when E had no employment but eventually work was found for him, with the help of the Probation Staff, in the advertising section of a newspaper. E has remained in that work for the past 3 years and if his conduct and industry continue to be good, there is promotion available for him.

E was an underprivileged child who mixed with bad company and was resentful of authority. In 1961, his future was extremely precarious. In 1964, there is at least a good chance that he will continue his life as a law abiding citizen. The two factors which have been of the greatest assistance in E's rehabilitation have been the support of the Probation staff and his own co-operation. His School's Board Certificate has also been valuable in that it facilitated obtaining employment.

APPENDIX C

CLASSIFICATION OF CRIMES COMMITTED BY OFFENDERS

IN 1961 SAMPLE

(1) CRIMES OF DISHONESTY

Stealing

Breaking and entering

Housebreaking

Receiving

False Pretences

Forgery

Uttering

\* Robbery with violence

Burglary

Fraud on a creditor

Opening a postal article

Secreting a postal article

Obtaining property on a forged document

Unlawful injury to property

Fraudulent misappropriation of Commonwealth Property.

\* Demanding property with menaces

Attempted stealing

Attempted breaking and entering

Attempted housebreaking

Forgery by aiding and abetting

Stealing by aiding and abetting

Accessory after the fact of stealing

\* Also included in the category of crimes of violence



(2) CRIMES OF VIOLENCE

- Murder
- Manslaughter
- Wounding
- Causing grievous bodily harm
- \* Robbery with violence
- Assault
- Aggravated assault
- \* Demanding property with menaces
- Attempt to cause grievous bodily harm

\* Also included in category of Crimes of Dishonesty.

(3) SEX CRIMES

- Defilement
- Indecent assault
- Rape
- Indecent practices with male person
- Indecency
- Incest
- Forcible abduction

(4) ARSON

- Arson
- Unlawfully setting fire to property.

(5) ESCAPE

- Escape.

## BIBLIOGRAPHY

### Books and Reports

- American Correction Association. "Manual of Correctional Standards" 1954
- American Law Institute. Model Penal Code 1962, Sentencing and Correction.
- Beccaria C. "On Crimes and Punishments" 1784.
- Bowlby J. "Maternal Care and Mental Health" 1951.
- Cambridge Department of Criminal Science. "Sexual Offenders" 1957.
- Criminology Department of the University of Melbourne. "Correction Handbook of Victoria" 1961.
- Eysenck H.J. "Crime and Personality" 1964.
- Gage D. "The Probation and Parole Services of New South Wales - their growth and development" 1961.
- Glueck S & E. "After-conduct of discharged offenders" 1946.
- Glueck S & E. "Unraveling Juvenile Delinquency" 1950
- Glueck S. "Law and Psychiatry" 1946
- Grünhut M. "Penal Reform" 1946.
- Grünhut M. "Probation and Mental Treatment" 1963
- Handbook for the Courts on the Treatment of Offenders.  
"The Sentence of the Court" H.M.S.O. London 1964.
- Hood R. "Sentencing in Magistrates Courts" 1962.
- Israeli Penal Law Revision (Modes of Punishment) Law.
- Jones H. "Crime and the Penal System" 1956
- Mussen Conger and Kagan. "Child Development and Personality" 1963.
- National Probation and Parole Association. "Guides for Sentencing" 1957.

- Report of the Interdepartmental Committee on the Business of the Criminal Courts, H.M.S.O. London 1961. (Streatfield Report).
- Report of the Committee on Children and Young Persons, H.M.S.O. London 1960 (Ingelby Report).
- Report of the Advisory Council on the Treatment of Offenders, "Alternatives to Short Terms of Imprisonment" H.M.S.O. London 1957.
- Report of the Advisory Council on the Treatment of Offenders, "Corporal Punishment" H.M.S.O. London 1960.
- Report of the Advisory Council on the Treatment of Offenders, "Preventive Detention" H.M.S.O. London 1963.
- Report of the Advisory Council on the Treatment of Offenders, "The Treatment of Young Offenders" H.M.S.O. London 1959.
- Report of the Home Office Research Unit, "The War against Crime in England and Wales" H.M.S.O. London 1964.
- Report of the Home Office Research Unit, "Delinquent Generations" H.M.S.O. London 1960.
- Report of the Select Committee of the Tasmanian House of Assembly "Police Matters in Tasmania" 1962.
- Reports of the Tasmanian Controller of Prisons 1963 and 1964.
- Reports of the Victorian Parole Boards 1961, 1962 and 1963.
- Report of Proceedings of Seminar at the University of New England "Prisoner Rehabilitation" 1963.
- Report of Civil Rehabilitation Committees of New South Wales "Out and About" 1964.
- Report of the Proceedings of the Second Australian Conference on Prison After-Care. 1962.
- Report on the Proceedings of the Seminars on Sentencing at Queens' University, Kingston, Ontario, 1962.
- Report of the Secretariat of the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1960.
- Report of the World Social Situation. United Nations 1963.
- Report of the Census of the Commonwealth of Australia 1961 Volume VI (Tasmania).
- Shields R.W. "A Cure of Delinquents" 1962.
- Swanson Newcomb and Hartley "Readings in Social Psychology" 1952.
- Year Book of the Commonwealth of Australia 1963 No. 49 Part VII.

Articles

Grupp S.E. "Work release in the United States" Journal of Criminal Law, Criminology and Police Science Vol.54 No.3 1963.

Johnston S.W. "Legislative Sentencing in Tasmania" Tasmanian University Law Review Vol.1 No. 6 1963.

J Johnston S.W. "Criminal Homicide rates in Australia" Journal of the Howard League for Penal Reform (Victoria) 1962.

Jones H. "The Problem of After-Care" The British Journal of Criminology Vol. 4 No. 4 1964.

Morris N. "Sentencing Convicted Criminals" Australian Law Journal 1953 Vol. 27.

Swanson D.C. "A General Outline of Adult Probation and its Practice in New South Wales" Australian Journal of Social Work 1959.

Statutes and Regulations (as amended)Tasmanian

Child Welfare Act 1960  
Criminal Code 1924  
Evidence Act 1910  
Firearms Act 1932  
Indeterminate Sentences Act 1921  
Inebriates Act 1885  
Inebriate Hospitals Act 1892  
Infants Welfare Act 1935  
Justices Act 1959  
Licensing Act 1932  
Mental Deficiency Act 1920  
Mental Health Act 1963  
Police Offences Act 1935  
Prison Act 1908  
Prison Regulations 1961  
Probation of Offenders Act 1934  
Sexual Offences Act 1961  
Traffic Act 1925

Victorian

Crimes Act 1958  
Social Welfare Act 1960

New Zealand

Criminal Injuries Compensation Act 1963.

English

Children and Young Persons Act 1963.

Criminal Justice Act 1948

Homicide Act 1957

Mental Health Act 1959

Cases

Hunter v. R. 1964 Tas (unreported)

Lahey v. Sanderson 1959 Tas. S.R.17.

Van der Linden v. R. 1964 Tas. (unreported)

R. v Breen 1963 Tas. (unreported)

R. v O'Neal 1963 Tas. (unreported)

R. v Stubbs 1947 N.S.W. S.R. 329.